

Uncertainty reigns over start of 114's limits

BY MAXINE BERNSTEIN
oregonlive.com

Backers of Oregon's gun control Measure 114 declared a major victory last week, but uncertainty lies ahead with months of legal wrangling and rule-making likely to delay the start well into next year, if ever.

State police, lawmakers and proponents must write the regulations for the state's first-ever permits to buy a gun and figure out how much the rules will cost to carry out.

Meanwhile, at least one Oregon sheriff has promised not to enforce the ban on large-capacity magazines, while gun rights advocates are gearing up to block the measure, arguing it violates their Second Amendment right to bear arms.

Voters narrowly passed the measure 51% to 49%, chalking up a momentous win in the national movement to curb gun violence.

Voters in seven counties considered some of the state's Democratic strongholds, including Multnomah, Washington, Lane and Benton counties, passed the measure, while 29 of the state's largely rural, conservative counties rejected it.

Its passage was the culmination of a grassroots, interfaith push by Lift Every Voice Oregon that began shortly after the 2018 school shooting in Parkland, Florida, killed 17 students and staff.

"We're very humbled by this, but it wasn't a victory over anybody. It was a victory for our children that we can all celebrate," said one of the chief petitioners, the Rev. Mark Knutson from Portland's Augustana Lutheran Church.

Lawyers advising the Oregon Firearms Federation, the Second Amendment Foundation and other gun rights advocates disagree.

They're preparing to ask a judge for a temporary restraining order and preliminary injunction to prevent the measure from taking effect until a judge can weigh if it meets constitutional muster.

"The first draft of our complaint has been written. We're still adding plaintiffs to the suit, and we'll be ready to pounce," said Alan M. Gottlieb, founder of the Second Amendment Foundation, based in Bellevue, Washington.

The legal landscape has changed significantly since supporters first drafted Measure 114. Court challenges to one of its provisions, a ban on large-capacity magazines, are pending in neighboring California and Washington states.

The outcomes in those cases could provide guidance to Oregon as the state drafts rules to put Measure 114 into practice, legal observers say.

While the passage of Measure 114 shows the strength of the gun safety movement right now, it's too early to tell if the law will survive constitutional scrutiny in the wake of the major U.S. Supreme Court ruling in late June overturning a New York gun safety law, said Adam Winkler, a constitutional law professor at UCLA School of Law.

"There's no doubt the U.S. Supreme Court has declared war on gun safety legislation," Winkler said. "We don't know which exact laws will be upheld."

He suspects part of Measure 114 may withstand review, such as the move to require completed background checks before a gun sale, but others may not, such as the ban of magazines that hold more than 10 rounds of ammunition.

"It's going to be awhile," Winkler said, "before this law goes into effect, if it ever does."

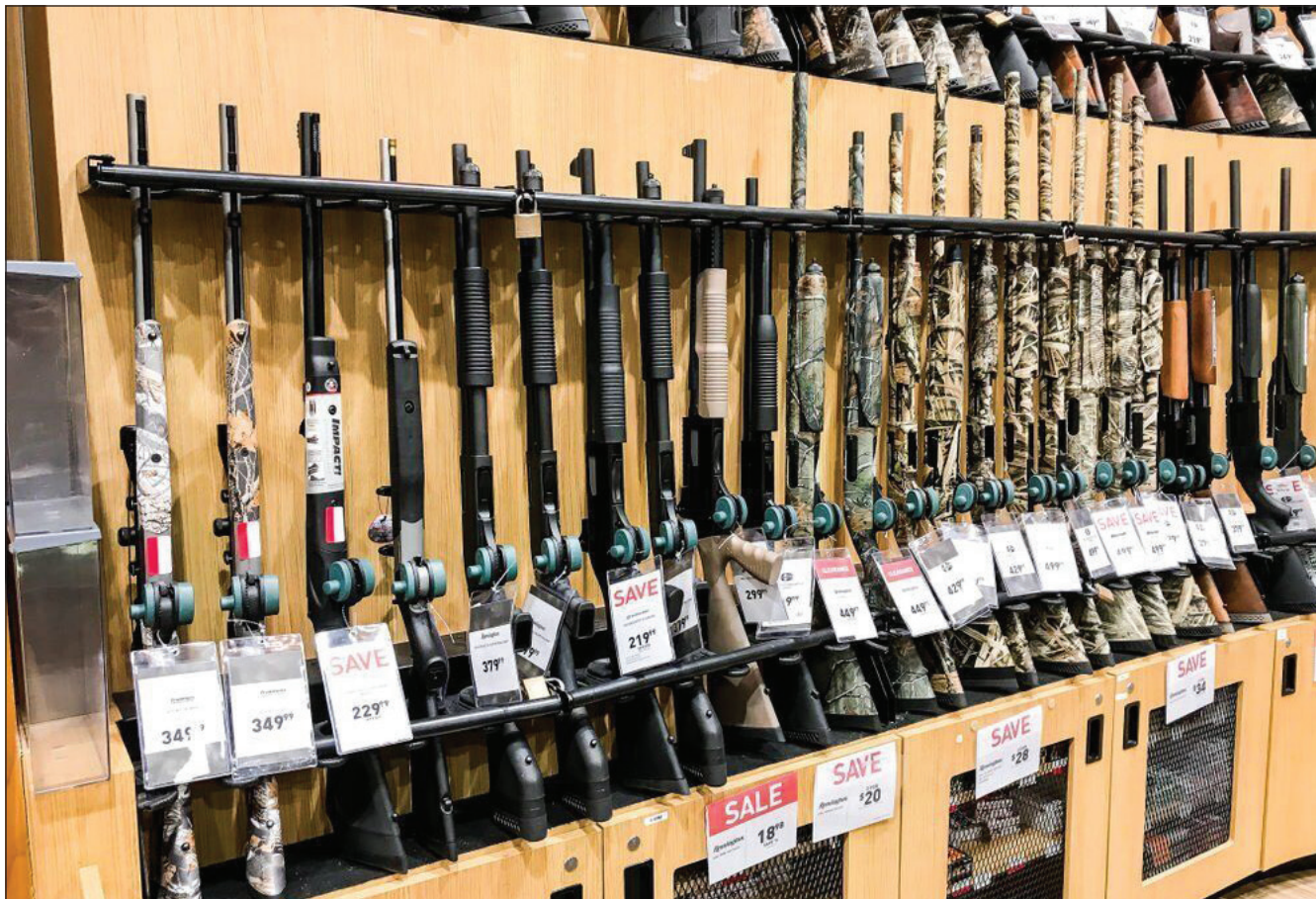
WHEN DOES MEASURE 114 START?

It technically kicks in on Jan. 15, 30 days after certification of the vote on Dec. 15.

Yet state police are likely to seek an extension — which could last months — to allow time to hash out the gun permit system in the Legislature.

State police are "assessing the required processes" under the measure but can't provide details on any plans until there's certification of the election results, said state police Capt. Kyle Kennedy, an agency spokesman.

Under the measure, anyone who wants to buy a gun must get a permit from a sheriff's office, pay an expected fee of \$65,



Roman Tiraspolky/Shutterstock.com

Oregon voters on Nov. 8 approved Measure 114, one of the more restrictive gun laws in the nation.

complete an approved firearms safety course at their own expense, submit a photo ID, be fingerprinted and pass a criminal background check.

HOW WILL RULES BE WRITTEN?

Lift Every Voice Oregon committee members are conferring with state lawmakers and state police on setting up a Measure 114 committee and workgroup to write the rules on everything from the information sought on permit application forms to the type of courses required for safety training.

The proponents' goal is to have a committee that includes a wide range of stakeholders.

Other issues to be decided: Whether state police need more employees to compile a database of those granted permits and others who are rejected; how much money or staff county sheriffs' offices will need to handle the permit process and what resources are needed to help state police do additional background checks for permit applicants.

"When you do something as comprehensive in terms of a new procedure, it's almost impossible to put it all in the statute," said Liz McKanna, a member of Lift Every Voice Oregon's legislative committee.

"Part of it is we also want input from the people who are going to be administering the permitting process," she said.

Sen. Floyd Prozanski, D-Eugene, who chairs the Senate's Judiciary Committee, said lawmakers still must work out a timeline and a process to assign various bills relating to Measure 114 to different committees.

Rep. Jason Kropf, D-Bend, who chairs the House Judiciary Committee, said he'll also be working with legislative counsel on next steps to implement the measure.

No dates are set yet.

WILL GUN SALES STOP?

Gun rights advocates contend the measure will halt gun sales as of Jan. 15 because no one will have a permit to buy one.

Proponents of the measure said that's not true.

"Sales will not halt because permits cannot be required until (Oregon State Police) develops the rules and finalizes the standardized form to apply," said Anthony Johnson, a spokesman for the Measure 114 campaign.

Salem-based attorney Leonard Williamson, who has been a licensed firearms dealer for 20 years and helps advise gun rights groups, remains skeptical.

"They may believe that, but there's no place in Measure 114 that says that 'until state police creates rules, that sales can continue,'" he said. "I'm not going to take a chance and violate the law because I don't want ATF or state police at my door."

Johnson said a legislative mandate or executive order could easily make it clear that the state won't prohibit gun sales while the permit rules are being drawn.

WHAT'S THE STATUS OF BACKGROUND CHECKS?

State police now do a criminal background check that's required when someone tries

to buy a gun from a federally licensed dealer.

Police will deny a sale if someone is under 18, has a felony conviction or an arrest warrant for a felony.

They also will reject gun buyers if they have been found guilty by reason of insanity in a criminal case, found incompetent to stand trial or have been committed to a mental health institution.

Measure 114 adds another, stricter background check required before someone can obtain a permit to buy a gun.

Under the measure, state police can deny permits to applicants if, for example, they are "reasonably likely to be a danger" to themselves or others because of their mental or psychological state or have a "past pattern of behavior" involving violence or threats of violence.

A permit is good for five years. Gun owners must undergo the permit background check each time they renew their permit.

And each time they buy a new gun after getting a permit, they must undergo the standard firearms criminal background check.

Measure 114 also closes the so-called Charleston loophole by requiring that a background check be completed before a gun is sold or transferred. Under federal law, a gun sale can occur if a background check isn't completed within three business days.

As the measure is written now, the requirement would go into effect Jan. 15, but state police may seek a delay in order to prepare to handle the added workload of permit background checks.

Several gun shop workers said stores typically already wait for state police to finish a background check before turning over a gun. One said the current turn-around time for state police to complete background checks is three to four weeks.

HOW ABOUT GUN TRAINING?

A county sheriff's office, which now processes concealed handgun licenses, would accept applications and issue the permits to buy guns once applicants pass a permit background check and meet other requirements.

Those include law enforcement-approved firearms training. Courses could be taken at a community college, firearms training school, private or public organization or from law enforcement, the measure says.

The course must cover a review of laws governing ownership, purchase, transfer and use of firearms, safe storage, reporting of lost and stolen guns, and the impact of homicides and suicides on families.

People also must demonstrate their ability to lock, load, unload, fire and store a gun in front of a certified firearms instructor.

The rules-writing is expected to address who can offer the courses and the curriculum.

WHAT DO I DO WITH MY HIGH-CAPACITY MAGAZINES?

Licensed dealers who already own larger-capacity magazines

have 180 days from Jan. 15 to sell them to an out-of-state gun dealer or other person out of state or to destroy them.

After the 180 days, gun dealers can sell or transfer only newly manufactured high-capacity magazines marked with a special stamp denoting they're for military or law enforcement use — two exceptions under the law.

One other exception: People who already own the magazines can keep them in a private home, on private property, use them at a shooting range or in a shooting competition, or for recreational purposes such as hunting as allowed by state law.

A check of gun shops around Portland on Friday, Nov. 11 showed they were doing brisk business selling rifles and guns.

Several workers said they don't know what they're going to do with the high-capacity magazines now in their inventory. They doubted any large-capacity magazine owners would destroy them until any legal challenges are heard.

One wondered if manufacturers would buy them back. One said they had reduced their inventory due to the uncertainty. Another said he knew that some gun shops in California have kept a stash in their basements until the law gets ironed out.

Yet another said they've gotten no guidance from the sheriff or the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives.

CAN SHERIFFS IGNORE THE LAW?

In Linn County, less than 24 hours after the measure passed, Sheriff Michelle Duncan announced her office "is NOT going to be enforcing magazine capacity limits."

She called the measure poorly written and said she hopes its passage will result in an immediate lawsuit.

Duncan told The Oregonian/OregonLive that she issued the statement because her office has received calls from people who fear they'll face criminal charges if they're pulled over while driving and found with a magazine

that holds more than 10 rounds.

"I'm not out there to try to look for their magazines and arrest anybody," she said.

Union County Sheriff Cody Bowen followed suit, saying his office won't enforce what he called "redundant background checks" and vowed to "fight to the death" to defend gun owners' constitutional rights "no matter what crazy law comes out of Salem!"

Klamath County Sheriff Chris Kaber also this week said he believes the measure presents an "unconstitutional restriction" on the right to possess guns. He urged those with large-capacity magazines to take photos and otherwise document that they had them before Measure 114 takes effect.

Winkler, the UCLA law professor, said sheriffs in Colorado and other states have taken similar stands.

Sheriffs are elected so it's not realistic to take enforcement action against them, he said.

Knutson, the Measure 114 petitioner, said he's reaching out to each county sheriff in the state to tell them he hears their concerns.

"We want them to work with us to make the most just and equitable law that works for everybody," he said. "I want to get their best thinking."

Oregon Attorney General Ellen Rosenblum said the state Department of Justice will help state agencies carry out the new law and will defend any lawsuits.

"We expect law enforcement to comply with the law, including enforcing it," said Kristina Edmunson, Rosenblum's spokesperson.

HOW MUCH TO ADMINISTER?

The Oregon State Sheriffs' Association estimated that it will cost local sheriff's offices more than \$40 million the first year to hire staff and manage the administrative permitting process for an estimated 300,000 permits a year.

The measure's proponents have argued that many sheriff's offices already handle the state's concealed handgun licensing

program, so adopting the gun permit-to-purchase program won't be too different or demanding.

For one, the Multnomah County Sheriff's Office is evaluating how the measure might affect its operations but it's too early to know if it will need additional staff or money, said agency spokesperson Christina Kempster.

State police have estimated they would need 38 more positions to handle the increased workload.

The measure is expected to cost both state and local governments \$55 million in the first biennium and about \$50 million for each successive biennium, according to a state financial impact committee. Local governments would get up to \$19.5 million annually from permit fees based on 300,000 applications a year.

But the state committee noted "uncertainty in the assumptions" behind those estimates.

This will be another central question for the Legislature and the Measure 114 Committee to address.

WHAT'S UP WITH THE U.S. SUPREME COURT?

Opponents are hoping to block the new gun control law before it takes effect. They're looking to a new standard set by the U.S. Supreme Court for evaluating Second Amendment claims.

In a 6-3 ruling in June, the nation's high court struck down a New York law that placed strict limits on carrying guns outside the home. The court's majority directed lower courts to use a new "text-and-history" standard when evaluating challenges to firearms regulations.

Courts must determine whether "the Second Amendment's plain text" protects the conduct in which the plaintiff wishes to engage, and if it does, then decide if the regulation "is consistent with this Nation's historical tradition of firearm regulation."

It threw out a prior two-prong standard that courts had used for years: First, does the regulation infringe on someone's Second Amendment right of self-defense, and if so, does the regulation further an important government interest.

Opponents of the measure also are buoyed by the U.S. Supreme Court's ruling weeks later vacating a decision in a San Diego case that had upheld California's nearly identical ban to Oregon's on magazines that hold more than 10 bullets.

The high court sent the case back to a lower court to reconsider in light of its decision in the New York case. Parties in the California case have until next spring to file further legal briefs.

California's attorney general in the latest brief filed Thursday argues that nothing in the Second Amendment text covers carrying large-capacity magazines.

The magazines aren't "arms" because they're not essential for operating a gun and they wouldn't have been considered "arms" in 1791 or 1868, the brief says. And, even if they were, they're not commonly used for self-defense, the brief says.

Meet the Authors

Zoom Event

NOVEMBER 22 • 12 P.M.

Register at GoEasternOregon.com