



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0562/1
CMH:emw&wlj

2015 ASSEMBLY BILL 247

May 27, 2015 – Introduced by Representatives BERCEAU, BARNES, GOYKE, JOHNSON, SARGENT, BILLINGS, BOWEN, GENRICH, HEBL, HESSELBEIN, KAHL, KESSLER, KOLSTE, MEYERS, OHNSTAD, POPE, RIEMER, SPREITZER, STUCK, SUBECK, C. TAYLOR, YOUNG, ZAMARRIPA and ZEPNICK, cosponsored by Senators HARRIS DODD, HANSEN, CARPENTER, C. LARSON, RINGHAND, RISSER and L. TAYLOR. Referred to Committee on State Affairs and Government Operations.

1 **AN ACT to repeal** 175.35 (1) (b); **to renumber** 175.35 (2) (a), (b), (c) and (d) and
2 175.35 (2j); **to renumber and amend** 175.35 (2) (intro.) and 175.35 (2i); **to**
3 **amend** 20.455 (2) (gr), 175.35 (title), 175.35 (1) (at), 175.35 (2g) (a), 175.35 (2g)
4 (b), 175.35 (2g) (c) 4. c., 175.35 (2k) (ar) 2., 175.35 (2k) (c) 2. a., 175.35 (2k) (c)
5 2. b., 175.35 (2k) (g), 175.35 (2k) (h), 175.35 (2L), 175.35 (2t) (a), (b) and (c),
6 175.60 (7) (d), 175.60 (15) (b) 4. b., 938.208 (1) (b), 938.34 (4m) (b) 2., 938.341,
7 941.237 (1) (d), 941.296 (1) (b), 968.20 (3) (b), 971.17 (1g) and 973.176 (1); and
8 **to create** 175.33, 175.35 (2) (bm), 175.35 (2) (cm) (intro.), 175.35 (2i) (b) 2.,
9 175.35 (2j) (b), 941.29 (1) (dm), 941.29 (1) (dn), 941.29 (1) (do), 941.29 (2) (dm),
10 941.29 (2) (dn) and 941.29 (2) (do) of the statutes; **relating to:** sales and
11 transfers of firearms and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law provides that various conditions, including a background check of a prospective purchaser, must be met before a federally licensed firearms dealer may transfer a handgun after a sale. This bill generally prohibits a person from selling or transferring a firearm unless the sale or transfer occurs through a federally

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licensed firearms dealer and involves a background check of the prospective transferee. Under this bill, the following are excepted from that prohibition: a sale or transfer to a firearms dealer, a sale or transfer for which the waiting period for the purchase of a handgun under current law does not apply, a transfer that is by gift, bequest, or inheritance to a family member, or a transfer that is intended to be temporary and that has a purpose that is not illegal. A person who is convicted of violating the prohibition is guilty of a misdemeanor and must be fined not less than \$500 nor more than \$10,000, may be imprisoned for not more than nine months, and may not possess a firearm for a period of two years.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.455 (2) (gr) of the statutes is amended to read:

2 20.455 (2) (gr) *Handgun Firearm purchaser record check; checks for licenses or*
3 *certifications to carry concealed weapons.* All moneys received as fee payments under
4 ss. 175.35 (2i) (a), 175.49 (5m), and 175.60 (7) (c) and (d), (13), and (15) (b) 4. a. and
5 b. to provide services under ss. 175.35, 175.49, and 175.60.

6 **SECTION 2.** 175.33 of the statutes is created to read:

7 **175.33 Transfer of firearms. (1)** In this section:

8 (a) “Family member” means a spouse, parent, grandparent, sibling, child, or
9 grandchild. The relationship may be by blood, marriage, or adoption.

10 (b) “Firearms dealer” has the meaning given in s. 175.35 (1) (ar).

11 **(2)** No person may sell or transfer ownership of a firearm, or purchase or obtain
12 ownership of a firearm, unless one of the following applies:

13 (a) The seller or transferor is a firearms dealer.

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1 (b) The seller or transferor makes the sale or transfer to or through a firearms
2 dealer and obtains a receipt under s. 175.35 (2j) (b).

3 (c) The sale or transfer of ownership of the firearm is one of the transfers listed
4 under s. 175.35 (2t).

5 (d) The transferor is transferring ownership of the firearm to a family member
6 by gift, bequest, or inheritance, the transferee is not prohibited from possessing a
7 firearm under s. 941.29, and the transferee is at least 18 years of age.

8 (e) The transferor is transferring ownership of the firearm with the intent that
9 the transfer be temporary, neither the transferor nor the transferee is prohibited
10 from possessing a firearm under s. 941.29, and the purpose of the transfer is not
11 prohibited by law.

12 **(3)** Any person who intentionally violates sub. (2) is guilty of a misdemeanor
13 and shall be fined not less than \$500 nor more than \$10,000 and may be imprisoned
14 for not more than 9 months. The person is also prohibited under s. 941.29 from
15 possessing a firearm for a period of 2 years.

16 **SECTION 3.** 175.35 (title) of the statutes is amended to read:

17 **175.35 (title) Waiting period for purchase of handguns firearms.**

18 **SECTION 4.** 175.35 (1) (at) of the statutes is amended to read:

19 175.35 **(1)** (at) "Firearms restrictions record search" means a search of
20 department of justice records to determine whether a person seeking to purchase a
21 handgun firearm is prohibited from possessing a firearm under s. 941.29. "Firearms
22 restrictions record search" includes a criminal history record search, a search to
23 determine whether a person is prohibited from possessing a firearm under s. 51.20
24 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check
25 system to determine whether a person has been ordered not to possess a firearm

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1 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
2 to determine whether the person is subject to an injunction under s. 813.12 or
3 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
4 established by any federally recognized Wisconsin Indian tribe or band, except the
5 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
6 or she is subject to the requirements and penalties under s. 941.29 and that has been
7 filed with the circuit court under s. 806.247 (3), and a search to determine whether
8 the person is prohibited from possessing a firearm under s. 813.123 (5m) or 813.125
9 (4m).

10 **SECTION 5.** 175.35 (1) (b) of the statutes is repealed.

11 **SECTION 6.** 175.35 (2) (intro.) of the statutes is renumbered 175.35 (2) (am) and
12 amended to read:

13 175.35 (2) (am) When a firearms dealer sells or transfers a handgun firearm,
14 he or she may not transfer possession of that handgun firearm to any other person
15 until all of the ~~following have occurred:~~ requirements under par. (cm) have been met.

16 **SECTION 7.** 175.35 (2) (a), (b), (c) and (d) of the statutes are renumbered 175.35
17 (2) (cm) 1., 2., 3. and 4.

18 **SECTION 8.** 175.35 (2) (bm) of the statutes is created to read:

19 175.35 (2) (bm) When a person sells a firearm or transfers ownership of a
20 firearm through a firearms dealer, the person may not transfer possession of that
21 firearm to any person other than the firearms dealer, and the firearms dealer may
22 not transfer or authorize the transfer of possession of that firearm to any person,
23 until all of the requirements of par. (cm) have been met. This paragraph does not
24 apply if a person sells a firearm, or transfers ownership of a firearm, to a firearms
25 dealer.

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1 **SECTION 9.** 175.35 (2) (cm) (intro.) of the statutes is created to read:

2 175.35 **(2)** (cm) (intro.) All of the following must occur before a sale or transfer
3 of a firearm occurs under par. (am) or (bm):

4 **SECTION 10.** 175.35 (2g) (a) of the statutes is amended to read:

5 175.35 **(2g)** (a) The department of justice shall promulgate rules prescribing
6 procedures for use under sub. (2) (cm) 1. for a transferee to provide and a firearms
7 dealer to inspect identification containing a photograph of the transferee.

8 **SECTION 11.** 175.35 (2g) (b) of the statutes is amended to read:

9 175.35 **(2g)** (b) The department of justice shall promulgate rules prescribing
10 a notification form for use under sub. (2) (cm) 2. and 3. requiring the transferee to
11 provide his or her name, date of birth, gender, race and social security number, and
12 other identification necessary to permit an accurate firearms restrictions record
13 search under par. (c) 3. and the required notification under par. (c) 4. The department
14 of justice shall make the forms available at locations throughout the state.

15 **SECTION 12.** 175.35 (2g) (c) 4. c. of the statutes is amended to read:

16 175.35 **(2g)** (c) 4. c. If the search indicates a felony charge without a recorded
17 disposition, the deadline under sub. (2) ~~(d)~~ (cm) 4. is extended to the end of the 3rd
18 complete working day commencing after the day on which the finding is made. The
19 department shall notify the firearms dealer of the extension as soon as practicable.
20 During the extended period, the department shall make every reasonable effort to
21 determine the disposition of the charge and notify the firearms dealer of the results
22 as soon as practicable.

23 **SECTION 13.** 175.35 (2i) of the statutes is renumbered 175.35 (2i) (a) and
24 amended to read:

ASSEMBLY BILL 247**SECTION 13**

1 175.35 **(2i)** (a) The department shall charge a firearms dealer a \$10 fee for each
2 firearms restrictions record search that the firearms dealer requests under sub. (2)
3 ~~(e)~~ (cm) 3.

4 (b) 1. The firearms dealer may collect the fee under par. (a) from the transferee.

5 (c) The department may refuse to conduct firearms restrictions record searches
6 for any firearms dealer who fails to pay any fee under ~~this subsection~~ par. (a) within
7 30 days after billing by the department.

8 **SECTION 14.** 175.35 (2i) (b) 2. of the statutes is created to read:

9 175.35 **(2i)** (b) 2. If the transfer is made under sub. (2) (bm), the firearms dealer
10 may collect from the transferor the fee under par. (a) and any additional amount to
11 cover any costs he or she incurs in processing the transfer.

12 **SECTION 15.** 175.35 (2j) of the statutes is renumbered 175.35 (2j) (a).

13 **SECTION 16.** 175.35 (2j) (b) of the statutes is created to read:

14 175.35 **(2j)** (b) If a person sells a firearm or transfers ownership of a firearm
15 through a firearms dealer under sub. (2) (bm), or sells a firearm or transfers
16 ownership of a firearm to a firearms dealer, the firearms dealer shall provide the
17 person a written receipt documenting the dealer's participation in the sale or
18 transfer.

19 **SECTION 17.** 175.35 (2k) (ar) 2. of the statutes is amended to read:

20 175.35 **(2k)** (ar) 2. Check each notification form received under sub. (2j) (a)
21 against the information recorded by the department regarding the corresponding
22 request for a firearms restrictions record search under sub. (2g). If the department
23 previously provided a unique approval number regarding the request and nothing
24 in the completed notification form indicates that the transferee is prohibited from
25 possessing a firearm under s. 941.29, the department shall destroy all records

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1 regarding that firearms restrictions record search within 30 days after receiving the
2 notification form.

3 **SECTION 18.** 175.35 (2k) (c) 2. a. of the statutes is amended to read:

4 175.35 (2k) (c) 2. a. A statement that the Wisconsin law enforcement agency
5 is conducting an investigation of a crime in which a ~~handgun~~ firearm was used or was
6 attempted to be used or was unlawfully possessed.

7 **SECTION 19.** 175.35 (2k) (c) 2. b. of the statutes is amended to read:

8 175.35 (2k) (c) 2. b. A statement by a division commander or higher authority
9 within the Wisconsin law enforcement agency that he or she has a reasonable
10 suspicion that the person who is the subject of the information request has obtained
11 or is attempting to obtain a ~~handgun~~ firearm.

12 **SECTION 20.** 175.35 (2k) (g) of the statutes is amended to read:

13 175.35 (2k) (g) If a search conducted under sub. (2g) indicates that the
14 transferee is prohibited from possessing a firearm under s. 941.29, the attorney
15 general or his or her designee may shall disclose to a law enforcement agency that
16 the transferee has attempted to obtain a ~~handgun~~ firearm.

17 **SECTION 21.** 175.35 (2k) (h) of the statutes is amended to read:

18 175.35 (2k) (h) If a search conducted under sub. (2g) indicates a felony charge
19 without a recorded disposition and the attorney general or his or her designee has
20 reasonable grounds to believe the transferee may pose a danger to himself, herself
21 or another, the attorney general or his or her designee may disclose to a law
22 enforcement agency that the transferee has obtained or has attempted to obtain a
23 ~~handgun~~ firearm.

24 **SECTION 22.** 175.35 (2L) of the statutes is amended to read:

ASSEMBLY BILL 247**SECTION 22**

1 175.35 (2L) The department of justice shall promulgate rules providing for the
2 review of nonapprovals under sub. (2g) (c) 4. a. Any person who is denied the right
3 to purchase a ~~handgun~~ firearm because the firearms dealer received a nonapproval
4 number under sub. (2g) (c) 4. a. may request a firearms restrictions record search
5 review under those rules. If the person disagrees with the results of that review, the
6 person may file an appeal under rules promulgated by the department.

7 **SECTION 23.** 175.35 (2t) (a), (b) and (c) of the statutes are amended to read:

8 175.35 (2t) (a) Transfers of any ~~handgun~~ firearm classified as an antique by
9 regulations of the U.S. department of the treasury.

10 (b) Transfers of any ~~handgun~~ firearm between firearms dealers or between
11 wholesalers and dealers.

12 (c) Transfers of any ~~handgun~~ firearm to law enforcement or armed services
13 agencies.

14 **SECTION 24.** 175.60 (7) (d) of the statutes is amended to read:

15 175.60 (7) (d) A fee for a background check that is equal to the fee charged under
16 s. 175.35 (2i) (a).

17 **SECTION 25.** 175.60 (15) (b) 4. b. of the statutes is amended to read:

18 175.60 (15) (b) 4. b. A fee for a background check that is equal to the fee charged
19 under s. 175.35 (2i) (a).

20 **SECTION 26.** 938.208 (1) (b) of the statutes is amended to read:

21 938.208 (1) (b) Probable cause exists to believe that the juvenile possessed,
22 used or threatened to use a handgun, as defined in s. ~~175.35 (1) (b)~~ 941.237 (1) (d),
23 short-barreled rifle, as defined in s. 941.28 (1) (b), or short-barreled shotgun, as
24 defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony
25 under ch. 940 if committed by an adult.

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1 **SECTION 27.** 938.34 (4m) (b) 2. of the statutes is amended to read:

2 938.34 (**4m**) (b) 2. The juvenile has possessed, used or threatened to use a
3 handgun, as defined in s. ~~175.35 (1) (b)~~ 941.237 (1) (d), short-barreled rifle, as
4 defined in s. 941.28 (1) (b), or short-barreled shotgun, as defined in s. 941.28 (1) (c),
5 while committing a delinquent act that would be a felony under ch. 940 if committed
6 by an adult.

7 **SECTION 28.** 938.341 of the statutes is amended to read:

8 **938.341 Delinquency adjudication; restriction on firearm possession.**

9 Whenever a court adjudicates a juvenile delinquent for an act that if committed by
10 an adult in this state would be a felony or for a violation under s. 175.33 (3), the court
11 shall inform the juvenile of the requirements and penalties under s. 941.29.

12 **SECTION 29.** 941.237 (1) (d) of the statutes is amended to read:

13 941.237 (**1**) (d) "Handgun" ~~has the meaning given in s. 175.35 (1) (b)~~ means any
14 weapon designed or redesigned, or made or remade, and intended to be fired while
15 held in one hand and to use the energy of an explosive to expel a projectile through
16 a smooth or rifled bore.

17 **SECTION 30.** 941.29 (1) (dm) of the statutes is created to read:

18 941.29 (**1**) (dm) Convicted of a misdemeanor under s. 175.33 (3).

19 **SECTION 31.** 941.29 (1) (dn) of the statutes is created to read:

20 941.29 (**1**) (dn) Adjudicated delinquent for a violation under s. 175.33 (3).

21 **SECTION 32.** 941.29 (1) (do) of the statutes is created to read:

22 941.29 (**1**) (do) Found not guilty of a misdemeanor under s. 175.33 (3) by reason
23 of mental disease or defect.

24 **SECTION 33.** 941.29 (2) (dm) of the statutes is created to read:

ASSEMBLY BILL 247**SECTION 33**

1 941.29 (2) (dm) The person possesses a firearm subsequent to the conviction,
2 as specified under sub. (1) (dm), unless 2 years have passed since the conviction.

3 **SECTION 34.** 941.29 (2) (dn) of the statutes is created to read:

4 941.29 (2) (dn) The person possesses a firearm subsequent to the adjudication,
5 as specified under sub. (1) (dn), unless 2 years have passed since the adjudication.

6 **SECTION 35.** 941.29 (2) (do) of the statutes is created to read:

7 941.29 (2) (do) The person possesses a firearm subsequent to the finding of not
8 guilty or not responsible by reason of mental disease or defect as specified in sub. (1)
9 (do), unless 2 years have passed since the finding.

10 **SECTION 36.** 941.296 (1) (b) of the statutes is amended to read:

11 941.296 (1) (b) "Handgun" has the meaning given in s. ~~175.35 (1) (b)~~ 941.237
12 (1) (d).

13 **SECTION 37.** 968.20 (3) (b) of the statutes is amended to read:

14 968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
15 town or county or other custodian of a seized dangerous weapon or ammunition, if
16 the dangerous weapon or ammunition is not required for evidence or use in further
17 investigation and has not been disposed of pursuant to a court order at the
18 completion of a criminal action or proceeding, shall make reasonable efforts to notify
19 all persons who have or may have an authorized rightful interest in the dangerous
20 weapon or ammunition of the application requirements under sub. (1). If, within 30
21 days after the notice, an application under sub. (1) is not made and the seized
22 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
23 city, village, town or county or other custodian may retain the dangerous weapon or
24 ammunition and authorize its use by a law enforcement agency, except that a
25 dangerous weapon used in the commission of a homicide or a handgun, as defined

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1 in s. ~~175.35 (1) (b)~~ 941.237 (1) (d), may not be retained. If a dangerous weapon other
2 than a firearm is not so retained, the city, village, town or county or other custodian
3 shall safely dispose of the dangerous weapon or, if the dangerous weapon is a motor
4 vehicle, as defined in s. 340.01 (35), sell the motor vehicle following the procedure
5 under s. 973.075 (4). If a firearm or ammunition is not so retained, the city, village,
6 town or county or other custodian shall ship it to the state crime laboratories and it
7 is then the property of the laboratories. A person designated by the department of
8 justice may destroy any material for which the laboratories have no use or arrange
9 for the exchange of material with other public agencies. In lieu of destruction,
10 shoulder weapons for which the laboratory has no use shall be turned over to the
11 department of natural resources for sale and distribution of proceeds under s. 29.934
12 or for use under s. 29.938.

13 **SECTION 38.** 971.17 (1g) of the statutes is amended to read:

14 971.17 (1g) NOTICE OF RESTRICTION ON FIREARM POSSESSION. If the defendant
15 under sub. (1) is found not guilty of a felony, or of a violation under s. 175.33 (3), by
16 reason of mental disease or defect, the court shall inform the defendant of the
17 requirements and penalties under s. 941.29.

18 **SECTION 39.** 973.176 (1) of the statutes is amended to read:

19 973.176 (1) FIREARM POSSESSION. Whenever a court imposes a sentence or
20 places a defendant on probation regarding a felony conviction or regarding a
21 conviction for a misdemeanor under s. 175.33 (3), the court shall inform the
22 defendant of the requirements and penalties under s. 941.29.

23 **SECTION 40. Initial applicability.**

24 (1) This act first applies to sales or transfers of ownership of firearms that occur
25 on the effective date of this subsection.

