



2003 ASSEMBLY BILL 40

February 10, 2003 – Introduced by Representatives PETTIS, GUNDRUM, GUNDERSON, OWENS, VAN ROY, SUDER, KERKMAN, KRAWCZYK, PLOUFF, HINES, NASS, J. FITZGERALD, BIES, F. LASEE, J. WOOD, LADWIG, VRAKAS, SERATTI, HAHN, STONE and PETROWSKI, cosponsored by Senators KANAVAS, LAZICH, S. FITZGERALD, STEPP, A. LASEE and ROESSLER. Referred to Committee on Criminal Justice.

1 **AN ACT to renumber and amend** 941.23; **to amend** 51.20 (13) (cv) 4., 51.20 (16)
2 (gm), 165.82 (1) (intro.), 343.19 (1), 343.50 (4), 813.12 (6) (am) 1., 813.12 (6) (am)
3 2., 813.122 (9) (am) 1., 813.122 (9) (am) 2., 813.125 (5r) (a), 813.125 (5r) (b) and
4 938.396 (8); and **to create** 165.87, 175.33, 343.14 (2) (j), 343.17 (3) (a) 14.,
5 941.23 (1), 941.23 (3), 941.237 (1) (er), 941.237 (3) (am) and 941.237 (3m) of the
6 statutes; **relating to:** retired peace officers carrying a concealed weapon and
7 the content of operators' licenses and identification cards issued by the
8 Department of Transportation and requiring the exercise of rule-making
9 authority.

Analysis by the Legislative Reference Bureau

Current law contains a number of prohibitions relating to carrying weapons. Among other things, current law prohibits a person from carrying a concealed and dangerous weapon. In addition, current law generally prohibits a person from intentionally going armed with a handgun in a tavern or a restaurant with a liquor license. A person who violates either of these prohibitions may be fined not more than \$10,000 or imprisoned for not more than nine months or both. Neither of these prohibitions, however, applies to a peace officer, who is a person vested by law with a duty to maintain public order to make arrests for crime.

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Under the provisions of this bill, a retired peace officer may carry a concealed weapon and may possess a handgun in a tavern or restaurant if the sale of alcohol accounts for 50% or less of the proprietor's receipts for the tavern or restaurant. In order for these provisions to apply, the retired peace officer: 1) must not have been the subject of any disciplinary investigation or proceeding at the time he or she retired; 2) may not have a physical or mental disability that precludes the safe handling of a firearm; 3) must be eligible under state and federal law to possess a firearm; 4) must have completed a firearms safety course, unless the person retired from his or her position as a peace officer within the preceding two years; and 5) must authorize the release of personnel records from his or her preretirement employer and records relating to his or her participation in a firearms safety course.

In addition, the retired peace officer must apply with the Law Enforcement Standards Board (board), which is responsible for verifying the person's eligibility. As part of that process, the board may ask the Department of Justice (DOJ) to conduct a firearms restriction records search, for which DOJ may not assess a fee. If the board determines that the person is eligible, the person may request that the Department of Transportation include on his or her driver's license or identification card a designation that he or she is authorized to carry a concealed weapon. The person must then carry the driver's license or identification card and, upon request, display it to a law enforcement officer if the person is carrying a concealed weapon or is carrying a handgun in a tavern or a restaurant with a liquor license.

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.** 51.20 (13) (cv) 4. of the statutes is amended to read:
2 51.20 (13) (cv) 4. If the court prohibits a subject individual from possessing a
3 firearm under subd. 1. or cancels a prohibition under subd. 2., the court clerk shall
4 notify the department of justice of that fact and provide any information identifying
5 the subject individual that is necessary to permit an accurate involuntary
6 commitment history record search under s. 175.33 or 175.35 (2g) (c). No other
7 information from the subject individual's court records may be disclosed to the
8 department of justice except by order of the court. The department of justice may
9 disclose information provided under this subdivision only as part of an involuntary
10 commitment history record search under s. 175.33 or 175.35 (2g) (c).

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1 **SECTION 2.** 51.20 (16) (gm) of the statutes is amended to read:

2 51.20 **(16)** (gm) Upon a request under par. (a), a court may cancel the
3 prohibition under sub. (13) (cv) 1. if the court determines, based on evidence
4 presented on the issue of the subject individual's dangerousness, that there no longer
5 is a substantial probability that the individual may use a firearm to cause physical
6 harm to himself or herself or endanger public safety. If a court cancels a prohibition
7 under sub. (13) (cv) 1. under this paragraph, the court clerk shall notify the
8 department of justice of that fact and provide any information identifying the subject
9 individual that is necessary to permit an accurate involuntary commitment record
10 search under s. 175.33 or 175.35 (2g) (c). No other information from the subject
11 individual's court records may be disclosed to the department of justice except by
12 order of the court.

13 **SECTION 3.** 165.82 (1) (intro.) of the statutes is amended to read:

14 165.82 **(1)** (intro.) Notwithstanding s. 19.35 (3), the department of justice shall
15 impose the following fees for criminal history searches for purposes unrelated to
16 criminal justice or to s. 175.33 or 175.35:

17 **SECTION 4.** 165.87 of the statutes is created to read:

18 **165.87 Authorization of retired peace officers to carry concealed**
19 **weapons. (1) DEFINITIONS.** In this section:

20 (a) "Board" means the law enforcement standards board.

21 (b) "Peace officer" has the meaning given in s. 939.22 (22).

22 (c) "Preretirement employer" means a person who employed a peace officer
23 immediately before the peace officer's retirement.

24 (d) "Retired peace officer" means a person who was formerly employed as a
25 peace officer and who, immediately upon the termination of his or her employment

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1 as a peace officer, qualified for an annuity under the Wisconsin Retirement System,
2 the retirement system of any 1st class city in Wisconsin, or any retirement system
3 established under chapter 201, laws of 1937.

4 (e) “Weapon” means dangerous weapon, as defined in s. 939.22 (10).

5 **(2) AUTHORIZATION BY BOARD.** If a person meets the requirements of sub. (3), the
6 board shall authorize the department of transportation in writing to include on the
7 person’s state identification card, as defined in s. 941.23 (1) (b), a designation that
8 the person is a qualified retired peace officer.

9 **(3) ELIGIBILITY.** A person is eligible to obtain the authorization described in sub.
10 (2) if all of the following apply:

11 (a) The person is a retired peace officer.

12 (b) At the time of his or her retirement as a peace officer, the person was not
13 the subject of any disciplinary investigation or proceeding being conducted by his or
14 her preretirement employer.

15 (c) The person does not have a physical or mental disability that precludes him
16 or her from safely handling a firearm.

17 (d) The person is not prohibited under s. 941.29 from possessing a firearm.

18 (e) The person is not prohibited under federal law from possessing a firearm.

19 (f) Within the preceding 2-year period, the person successfully completed a
20 course of 8 hours or less that was offered by a technical college and that covered the
21 safe use and storage of a handgun or an equivalent course offered by any other
22 institution or program. This paragraph does not apply during the 2-year period
23 immediately following a person’s retirement from active service as a peace officer.

24 (g) The person has authorized all of the following in writing:

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1 1. His or her preretirement employer to permit the board to obtain records from
2 the person's personnel file.

3 2. The technical college or other institution or program that provided the
4 person the training described in par. (f) to permit the board to obtain records relating
5 to the person's participation in the training.

6 **(4) VERIFYING ELIGIBILITY.** In investigating a person's eligibility under sub. (3),
7 the board may, among other things, do any of the following:

8 (a) Review personnel records relating to the person that are maintained by the
9 person's preretirement employer.

10 (b) Review records that are maintained by the technical college or other
11 institution or program that provided the person the training described in sub. (3) (f)
12 to verify that the person successfully completed the training.

13 (c) Request that the department perform a firearms restrictions record search
14 under s. 175.33.

15 **(5) VERIFYING CONTINUED ELIGIBILITY.** No later than 2 years after the date on
16 which the board sends the department of transportation a written authorization
17 under sub. (2), the person to whom the authorization applies shall submit to the
18 board written evidence of the person's continued eligibility under sub. (3). The board
19 may take any steps, including those described in sub. (4), to verify the person's
20 continued eligibility.

21 **(6) REVOCATION.** (a) If the board determines at any time that a person whose
22 application for an authorization under sub. (2) has been granted does not meet the
23 requirements of sub. (3) or that a person has failed to comply with sub. (5), the board
24 shall revoke its authorization. The board shall immediately thereafter notify the

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1 person by certified mail and notify the department of transportation of the
2 revocation.

3 (b) If the board revokes its authorization with respect to a person under par.
4 (a), the person may reapply for authorization if the person's circumstances change
5 so that he or she is no longer ineligible.

6 **(7) RULES.** The board shall promulgate rules regarding all of the following:

7 (a) The method by which a person may apply under this section for
8 authorization to carry a concealed weapon, the application forms to be used by such
9 persons, and the forms to be used by persons documenting their continued eligibility
10 under sub. (5).

11 (b) Verification by the board of a person's eligibility under sub. (3).

12 (c) Revocation by the board of any authorization under sub. (2).

13 (d) Receiving and investigating complaints that a person is ineligible for an
14 authorization described in sub. (2).

15 (e) Verification by the department of transportation that a person requesting
16 inclusion of the designation under s. 343.14 (2) (j) has had his or her application for
17 authorization granted under this section. The board shall consult with the
18 department of transportation in developing the rules required under this paragraph.

19 (f) Any other rules necessary for the administration of this section.

20 **SECTION 5.** 175.33 of the statutes is created to read:

21 **175.33 Background checks for retired peace officers.** At the request of
22 the law enforcement standards board under s. 165.87 (4) (c), the department of
23 justice shall conduct a firearms restriction record search, as defined in s. 175.35 (1)
24 (at). The department may not charge a fee for a firearms restriction record search
25 conducted under this section. The department shall promulgate rules prescribing

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1 the manner by which firearms restriction record searches are to be conducted under
2 this section.

3 **SECTION 6.** 343.14 (2) (j) of the statutes is created to read:

4 343.14 (2) (j) A question as to whether the applicant is a retired peace officer
5 who has successfully applied for authorization to carry a concealed weapon under s.
6 165.87 and who wishes to have the department include on the license document the
7 designation described under s. 343.17 (3) (a) 14.

8 **SECTION 7.** 343.17 (3) (a) 14. of the statutes is created to read:

9 343.17 (3) (a) 14. If the person has answered "yes" to the question under s.
10 343.14 (2) (j) and the department has verified that the person has successfully
11 applied for authorization to carry a concealed weapon under s. 165.87 under rules
12 promulgated by the law enforcement standards board under s. 165.87 (7) (e), a
13 designation that the person has successfully applied for that authorization.

14 **SECTION 8.** 343.19 (1) of the statutes is amended to read:

15 343.19 (1) If a license issued under this chapter or an identification card issued
16 under s. 343.50 is lost or destroyed ~~or~~, the name or address named in the license or
17 identification card is changed ~~or~~, the condition specified in s. 343.17 (3) (a) 12. or 13.
18 no longer applies, or the condition specified in s. 343.17 (3) (a) 14. applies, the person
19 to whom the license or identification card was issued may obtain a duplicate thereof
20 or substitute therefor upon furnishing proof satisfactory to the department of name
21 and date of birth and that the license or identification card has been lost or destroyed
22 or that application for a duplicate license or identification card is being made for a
23 change of address or name ~~or~~, because the condition specified in s. 343.17 (3) (a) 12.
24 or 13. no longer applies, or because the condition specified in s. 343.17 (3) (a) 14.
25 applies. If the applicant is a male who is at least 18 years of age but less than 26 years

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1 of age, the application shall include the information required under s. 343.14 (2)
2 (em). If the original license or identification card is found it shall immediately be
3 transmitted to the department. Duplicates of nonphoto licenses shall be issued as
4 nonphoto licenses.

5 **SECTION 9.** 343.50 (4) of the statutes is amended to read:

6 343.50 (4) APPLICATION. The application for an identification card shall include
7 any information required under ss. 85.103 (2) and 343.14 (2) (a), (b), (bm), (br), and
8 (em), such further information as the department may reasonably require to enable
9 it to determine whether the applicant is entitled by law to an identification card, and,
10 for applicants who are aged 65 years or older, material, as provided by the
11 department, explaining the voluntary program that is specified in s. 71.55 (10) (b).
12 The department shall include on the application form the question described in s.
13 343.14 (2) (j) and shall, as part of the application process, take a photograph of the
14 applicant to comply with sub. (3). No application may be processed without the
15 photograph being taken. Misrepresentations in violation of s. 343.14 (5) are
16 punishable as provided in s. 343.14 (9).

17 **SECTION 10.** 813.12 (6) (am) 1. of the statutes is amended to read:

18 813.12 (6) (am) 1. If an injunction is issued or extended under sub. (4) or if a
19 tribal injunction is filed under s. 806.247 (3), the clerk of the circuit court shall notify
20 the department of justice of the injunction and shall provide the department of
21 justice with information concerning the period during which the injunction is in
22 effect and information necessary to identify the respondent for purposes of a firearms
23 restrictions record search under s. 175.33 or 175.35 (2g) (c).

24 **SECTION 11.** 813.12 (6) (am) 2. of the statutes is amended to read:

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1 813.12 (6) (am) 2. Except as provided in subd. 3., the department of justice may
2 disclose information that it receives under subd. 1. only as part of a firearms
3 restrictions record search under s. 175.33 or 175.35 (2g) (c).

4 **SECTION 12.** 813.122 (9) (am) 1. of the statutes is amended to read:

5 813.122 (9) (am) 1. If an injunction is issued or extended under sub. (5), the
6 clerk of the circuit court shall notify the department of justice of the injunction and
7 shall provide the department of justice with information concerning the period
8 during which the injunction is in effect and information necessary to identify the
9 respondent for purposes of a firearms restrictions record search under s. 175.33 or
10 175.35 (2g) (c).

11 **SECTION 13.** 813.122 (9) (am) 2. of the statutes is amended to read:

12 813.122 (9) (am) 2. Except as provided in subd. 3., the department of justice
13 may disclose information that it receives under subd. 1. only as part of a firearms
14 restrictions record search under s. 175.33 or 175.35 (2g) (c).

15 **SECTION 14.** 813.125 (5r) (a) of the statutes is amended to read:

16 813.125 (5r) (a) If an order prohibiting a respondent from possessing a firearm
17 is issued under sub. (4m), the clerk of the circuit court shall notify the department
18 of justice of the existence of the order prohibiting a respondent from possessing a
19 firearm and shall provide the department of justice with information concerning the
20 period during which the order is in effect and information necessary to identify the
21 respondent for purposes of a firearms restrictions record search under s. 175.33 or
22 175.35 (2g) (c).

23 **SECTION 15.** 813.125 (5r) (b) of the statutes is amended to read:

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1 813.125 **(5r)** (b) Except as provided in par. (c), the department of justice may
2 disclose information that it receives under par. (a) only as part of a firearms
3 restrictions record search under s. 175.33 or 175.35 (2g) (c).

4 **SECTION 16.** 938.396 (8) of the statutes is amended to read:

5 938.396 **(8)** Notwithstanding sub. (2), if a juvenile is adjudged delinquent for
6 an act that would be a felony if committed by an adult, the court clerk shall notify
7 the department of justice of that fact. No other information from the juvenile's court
8 records may be disclosed to the department of justice except by order of the court.
9 The department of justice may disclose any information provided under this
10 subsection only as part of a firearms restrictions record search under s. 175.33 or
11 175.35 (2g) (c).

12 **SECTION 17.** 941.23 of the statutes is renumbered 941.23 (2) and amended to
13 read:

14 941.23 **(2)** Any person except a peace officer or a qualified retired peace officer
15 who goes armed with a concealed and dangerous weapon is guilty of a Class A
16 misdemeanor.

17 **SECTION 18.** 941.23 (1) of the statutes is created to read:

18 941.23 **(1)** In this section:

19 (a) "Qualified retired peace officer" means a person whose request for
20 authorization to carry a concealed weapon under s. 165.87 has been granted, who
21 continues to meet the requirements for such an authorization, and who holds a valid
22 state identification card containing a designation under s. 343.17 (3) (a) 14.

23 (b) "State identification card" means an operator's license issued under ch. 343
24 that contains a photograph of the license holder or an identification card issued
25 under s. 343.50.

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1 **SECTION 19.** 941.23 (3) of the statutes is created to read:

2 941.23 (3) If he or she is carrying a concealed weapon, a qualified retired peace
3 officer shall carry his or her state identification card and shall, upon the request of
4 any law enforcement officer, display it to the law enforcement officer.

5 **SECTION 20.** 941.237 (1) (er) of the statutes is created to read:

6 941.237 (1) (er) "Proprietor" means a person to whom a Class "B" or "Class B"
7 license or permit has been issued under ch. 125.

8 **SECTION 21.** 941.237 (3) (am) of the statutes is created to read:

9 941.237 (3) (am) A qualified retired peace officer, as defined in s. 941.23 (1) (a).
10 This paragraph does not apply to any premises for which a Class "B" or "Class B"
11 license or permit has been issued under ch. 125 if the sale of intoxicating liquors or
12 fermented malt beverages or both on those premises accounts for more than 50% of
13 the proprietor's receipts from those premises.

14 **SECTION 22.** 941.237 (3m) of the statutes is created to read:

15 941.237 (3m) If he or she is carrying a firearm on any premises for which a
16 Class "B" or "Class B" license or permit has been issued under ch. 125, a qualified
17 retired peace officer, as defined in s. 941.23 (1) (a), shall carry his or her state
18 identification card, as defined in s. 941.23 (1) (b), and shall, upon the request of any
19 law enforcement officer, display it to the law enforcement officer.

20 **SECTION 23. Nonstatutory provisions.**

21 (1) (a) In this subsection, "board" means the law enforcement standards board.

22 (b) Using the procedure under section 227.24 of the statutes, the board shall
23 promulgate the rules required under section 165.87 (7) of the statutes, as created by
24 this act, for the period beginning on the effective date of this paragraph and ending
25 on the effective date of the permanent rules promulgated under section 165.87 (7) of

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1 the statutes, as created by this act, but the rules may not remain effective for longer
2 than the period authorized under section 227.24 (1) (c) and (2) of the statutes. The
3 board shall promulgate the rules required under this paragraph no later than the
4 first day of the 3rd month beginning after the effective date of this paragraph.
5 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the board is not
6 required to provide evidence that promulgating a rule under this paragraph as an
7 emergency rule is necessary for the preservation of the public peace, health, safety,
8 or welfare and is not required to provide a finding of emergency for a rule
9 promulgated under this paragraph.

10 **SECTION 24. Effective dates.** This act takes effect on the first day of the 4th
11 month beginning after publication, except as follows.

12 (1) SECTION 23 of this act takes effect on the day after publication.

13 (END)