



2013 ASSEMBLY BILL 138

April 4, 2013 – Introduced by Representatives RICHARDS, BERCEAU, BARNES, GOYKE, JOHNSON, BERNARD SCHABER, BILLINGS, CLARK, GENRICH, HEBL, HESSELBEIN, HULSEY, KAHL, KESSLER, KOLSTE, OHNSTAD, PASCH, POPE, RIEMER, RINGHAND, SARGENT, SINICKI, C. TAYLOR, WRIGHT, YOUNG, ZAMARRIPA and ZEPNICK, cosponsored by Senators HARRIS, LEHMAN, RISSER, CARPENTER, HANSEN, MILLER, SHILLING and L. TAYLOR. Referred to Committee on Criminal Justice.

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

ASSEMBLY BILL 138

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.

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 fee.* All moneys
3 received as fee payments under s. 175.35 (2i) (a) to provide services under s. 175.35.

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

5 **175.33 Transfer of firearms. (1)** In this section:

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

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

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

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

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

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

ASSEMBLY BILL 138

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

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

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

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

13 **175.35 (title) Waiting period for purchase of handguns firearms.**

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

15 175.35 (1) (at) "Firearms restrictions record search" means a search of
16 department of justice records to determine whether a person seeking to purchase a
17 handgun firearm is prohibited from possessing a firearm under s. 941.29. "Firearms
18 restriction record search" includes a criminal history record search, a search to
19 determine whether a person is prohibited from possessing a firearm under s. 51.20
20 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check
21 system to determine whether a person has been ordered not to possess a firearm
22 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
23 to determine whether the person is subject to an injunction under s. 813.12 or
24 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
25 established by any federally recognized Wisconsin Indian tribe or band, except the

ASSEMBLY BILL 138

1 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
2 or she is subject to the requirements and penalties under s. 941.29 and that has been
3 filed with the circuit court under s. 806.247 (3), and a search to determine whether
4 the person is prohibited from possessing a firearm under s. 813.125 (4m).

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

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

8 175.35 (2) (am) When a firearms dealer sells or transfers a handgun firearm,
9 he or she may not transfer possession of that handgun firearm to any other person
10 until all of the following have occurred: requirements under par. (cm) have been met.

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

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

14 175.35 (2) (bm) When a person sells a firearm or transfers ownership of a
15 firearm through a firearms dealer, the person may not transfer possession of that
16 firearm to any person other than the firearms dealer, and the firearms dealer may
17 not transfer or authorize the transfer of possession of that firearm to any person,
18 until all of the requirements of par. (cm) have been met. This paragraph does not
19 apply if a person sells a firearm, or transfers ownership of a firearm, to a firearms
20 dealer.

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

22 175.35 (2) (cm) (intro.) All of the following must occur before a sale or transfer
23 of a firearm occurs under par. (am) or (bm):

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

ASSEMBLY BILL 138

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

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

5 175.35 **(2g)** (b) The department of justice shall promulgate rules prescribing
6 a notification form for use under sub. (2) (cm) 2. requiring the transferee to provide
7 his or her name, date of birth, gender, race ~~and social security number,~~ and other
8 identification necessary to permit an accurate firearms restrictions record search
9 under par. (c) 3. and the required notification under par. (c) 4. The department of
10 justice shall make the forms available at locations throughout the state.

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

12 175.35 **(2g)** (c) 4. c. If the search indicates a felony charge without a recorded
13 disposition, the deadline under sub. (2) ~~(d)~~ (cm) 4. is extended to the end of the 3rd
14 complete working day commencing after the day on which the finding is made. The
15 department shall notify the firearms dealer of the extension as soon as practicable.
16 During the extended period, the department shall make every reasonable effort to
17 determine the disposition of the charge and notify the firearms dealer of the results
18 as soon as practicable.

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

21 175.35 **(2i)** (a) The department shall charge a firearms dealer a \$13 fee for each
22 firearms restrictions record search that the firearms dealer requests under sub. (2)
23 ~~(e)~~ (cm) 3.

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

ASSEMBLY BILL 138**SECTION 13**

1 (c) The department may refuse to conduct firearms restrictions record searches
2 for any firearms dealer who fails to pay any fee under ~~this subsection~~ par. (a) within
3 30 days after billing by the department.

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

5 175.35 **(2i)** (b) 2. If the transfer is made under sub. (2) (bm), the firearms dealer
6 may collect from the transferor the fee under par. (a) and any additional amount to
7 cover any costs he or she incurs in processing the transfer.

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

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

10 175.35 **(2j)** (b) If a person sells a firearm or transfers ownership of a firearm
11 through a firearms dealer under sub. (2) (bm), or sells a firearm or transfers
12 ownership of a firearm to a firearms dealer, the firearms dealer shall provide the
13 person a written receipt documenting the dealer's participation in the sale or
14 transfer.

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

16 175.35 **(2k)** (ar) 2. Check each duplicate notification form received under sub.
17 (2j) (a) against the information recorded by the department regarding the
18 corresponding request for a firearms restrictions record search under sub. (2g). If the
19 department previously provided a unique approval number regarding the request
20 and nothing in the duplicate completed notification form indicates that the
21 transferee is prohibited from possessing a firearm under s. 941.29, the department
22 shall destroy all records regarding that firearms restrictions record search within 30
23 days after receiving the duplicate form.

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

ASSEMBLY BILL 138

1 175.35 (2k) (c) 2. a. A statement that the Wisconsin law enforcement agency
2 is conducting an investigation of a crime in which a handgun firearm was used or was
3 attempted to be used or was unlawfully possessed.

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

5 175.35 (2k) (c) 2. b. A statement by a division commander or higher authority
6 within the Wisconsin law enforcement agency that he or she has a reasonable
7 suspicion that the person who is the subject of the information request has obtained
8 or is attempting to obtain a handgun firearm.

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

10 175.35 (2k) (g) If a search conducted under sub. (2g) indicates that the
11 transferee is prohibited from possessing a firearm under s. 941.29, the attorney
12 general or his or her designee may shall disclose to a law enforcement agency that
13 the transferee has attempted to obtain a handgun firearm.

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

15 175.35 (2k) (h) If a search conducted under sub. (2g) indicates a felony charge
16 without a recorded disposition and the attorney general or his or her designee has
17 reasonable grounds to believe the transferee may pose a danger to himself, herself
18 or another, the attorney general or his or her designee may disclose to a law
19 enforcement agency that the transferee has obtained or has attempted to obtain a
20 handgun firearm.

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

22 175.35 (2L) The department of justice shall promulgate rules providing for the
23 review of nonapprovals under sub. (2g) (c) 4. a. Any person who is denied the right
24 to purchase a handgun firearm because the firearms dealer received a nonapproval
25 number under sub. (2g) (c) 4. a. may request a firearms restrictions record search

ASSEMBLY BILL 138**SECTION 22**

1 review under those rules. If the person disagrees with the results of that review, the
2 person may file an appeal under rules promulgated by the department.

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

4 175.35 (2t) (a) Transfers of any ~~handgun~~ firearm classified as an antique by
5 regulations of the U.S. department of the treasury.

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

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

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

11 175.60 (7) (d) A fee for a background check that is equal to the fee charged under
12 s. 175.35 (2i) (a).

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

14 175.60 (15) (b) 4. b. A fee for a background check that is equal to the fee charged
15 under s. 175.35 (2i) (a).

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

17 938.208 (1) (b) Probable cause exists to believe that the juvenile possessed,
18 used or threatened to use a handgun, as defined in s. ~~175.35 (1) (b)~~ 941.237 (1) (d),
19 short-barreled rifle, as defined in s. 941.28 (1) (b), or short-barreled shotgun, as
20 defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony
21 under ch. 940 if committed by an adult.

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

23 938.34 (4m) (b) 2. The juvenile has possessed, used or threatened to use a
24 handgun, as defined in s. ~~175.35 (1) (b)~~ 941.237 (1) (d), short-barreled rifle, as
25 defined in s. 941.28 (1) (b), or short-barreled shotgun, as defined in s. 941.28 (1) (c),

ASSEMBLY BILL 138

1 while committing a delinquent act that would be a felony under ch. 940 if committed
2 by an adult.

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

4 **938.341 Delinquency adjudication; restriction on firearm possession.**

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

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

9 941.237 (1) (d) “Handgun” ~~has the meaning given in s. 175.35 (1) (b)~~ means any
10 weapon designed or redesigned, or made or remade, and intended to be fired while
11 held in one hand and to use the energy of an explosive to expel a projectile through
12 a smooth or rifled bore.

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

14 941.29 (1) (dm) Convicted of a misdemeanor under s. 175.33 (3).

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

16 941.29 (1) (dn) Adjudicated delinquent for a violation under s. 175.33 (3).

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

18 941.29 (1) (do) Found not guilty of a misdemeanor under s. 175.33 (3) by reason
19 of mental disease or defect.

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

21 941.29 (2) (dm) The person possesses a firearm subsequent to the conviction,
22 as specified under sub. (1) (dm), unless 2 years have passed since the conviction.

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

24 941.29 (2) (dn) The person possesses a firearm subsequent to the adjudication,
25 as specified under sub. (1) (dn), unless 2 years have passed since the adjudication.

ASSEMBLY BILL 138**SECTION 35**

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

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

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

6 941.296 **(1)** (b) "Handgun" has the meaning given in s. ~~175.35 (1) (b)~~ 941.237
7 (1) (d).

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

9 968.20 **(3)** (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
10 town or county or other custodian of a seized dangerous weapon or ammunition, if
11 the dangerous weapon or ammunition is not required for evidence or use in further
12 investigation and has not been disposed of pursuant to a court order at the
13 completion of a criminal action or proceeding, shall make reasonable efforts to notify
14 all persons who have or may have an authorized rightful interest in the dangerous
15 weapon or ammunition of the application requirements under sub. (1). If, within 30
16 days after the notice, an application under sub. (1) is not made and the seized
17 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
18 city, village, town or county or other custodian may retain the dangerous weapon or
19 ammunition and authorize its use by a law enforcement agency, except that a
20 dangerous weapon used in the commission of a homicide or a handgun, as defined
21 in s. ~~175.35 (1) (b)~~ 941.237 (1) (d), may not be retained. If a dangerous weapon other
22 than a firearm is not so retained, the city, village, town or county or other custodian
23 shall safely dispose of the dangerous weapon or, if the dangerous weapon is a motor
24 vehicle, as defined in s. 340.01 (35), sell the motor vehicle following the procedure
25 under s. 973.075 (4). If a firearm or ammunition is not so retained, the city, village,

ASSEMBLY BILL 138

1 town or county or other custodian shall ship it to the state crime laboratories and it
2 is then the property of the laboratories. A person designated by the department of
3 justice may destroy any material for which the laboratories have no use or arrange
4 for the exchange of material with other public agencies. In lieu of destruction,
5 shoulder weapons for which the laboratory has no use shall be turned over to the
6 department of natural resources for sale and distribution of proceeds under s. 29.934
7 or for use under s. 29.938.

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

9 971.17 (1g) NOTICE OF RESTRICTION ON FIREARM POSSESSION. If the defendant
10 under sub. (1) is found not guilty of a felony, or of a violation under s. 175.33 (3), by
11 reason of mental disease or defect, the court shall inform the defendant of the
12 requirements and penalties under s. 941.29.

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

14 973.176 (1) FIREARM POSSESSION. Whenever a court imposes a sentence or
15 places a defendant on probation regarding a felony conviction or regarding a
16 conviction for a misdemeanor under s. 175.33 (3), the court shall inform the
17 defendant of the requirements and penalties under s. 941.29.

18 **SECTION 40. Initial applicability.**

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

21 **SECTION 41. Effective date.**

22 (1) This act takes effect on the first day of the 7th month beginning after
23 publication.

24

(END)