

2007 DRAFTING REQUEST

Bill

Received: **01/08/2008**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Donald Friske (608) 266-7694**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - guns and weapons
Criminal Law - law enforcement**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Friske@legis.wisconsin.gov**

Carbon copy (CC:) to: **anne.sappenfield@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Law enforcement and retired law enforcement officers to carry concealed weapons

Instructions:

See Attached

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State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3780/2
CMH:.....
Imk

d-note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Wed.
A.M.
if possible

gen cat.

✓

1 AN ACT ...; relating to carrying of concealed weapons by law enforcement
2 officers and by retired law enforcement officers and making an appropriation. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

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

3 SECTION 1. 20.455 (2) (gu) of the statutes is created to read:
4 20.455 (2) (gu) Certification cards for carrying of concealed weapons. All
5 moneys received as fees under s. 175.48 (2) (d), (3) (d), and (5) (b) to verify eligibility
6 of, and to issue certification cards to, retired law enforcement officers seeking to
7 carry concealed weapons. ✓

8 SECTION 2. 23.33 (3) (e) of the statutes is renumbered 23.33 (3) (e) (intro.) and
9 amended to read:

plain

1 23.33 (3) (e) With any firearm in his or her possession unless it is unloaded and
 2 enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying
 3 case. This paragraph does not apply to any of the following:

History: 1985 a. 29; 1987 a. 200, 353, 399, 403; 1989 a. 31, 275, 359; 1991 a. 39, 303, 315; 1993 a. 16, 105, 119, 405; 1995 a. 27 ss. 1350 to 1351, 9126 (19); 1995 a. 436, 448; 1997 a. 27, 248, 283; 1999 a. 9; 2001 a. 16, 90, 106, 109; 2003 a. 30, 97, 251, 326; 2005 a. 25, 253, 481; 2007 a. 20 ss. 664m to 666m, 9121 (6) (a); 2007 a. 27.

4 **SECTION 3.** 23.33 (3) (e) 1., 2., 3., 4. and 5. of the statutes are created to read:

5 23.33 (3) (e) 1. A person who is employed as a law enforcement officer, as
 6 defined in s. 175.48 (1) (c), and to whom s. 941.23 (2) (b) applies.

7 2. A retired officer, as defined in s. 175.48 (1) (e), who is carrying a current
 8 certification card issued under s. 175.48 (2) (a) or renewed under s. 175.48 (5) (a) and
 9 to whom s. 941.23 (2) (c) applies.

10 3. A retired federal officer, as defined in s. 175.48 (1) (d), who is carrying a
 11 current certification card issued under s. 175.48 (3) (a) or renewed under s. 175.48
 12 (5) (a) and to whom s. 941.23 (2) (d) applies.

13 4. A retired out-of-state officer, as defined in s. 175.48 (1) (f), who is carrying
 14 a current certification card issued under s. 175.48 (2) (a) or renewed under s. 175.48
 15 (5) (a) and to whom s. 941.23 (2) (e) applies.

16 5. A retired nonresident law enforcement officer, as defined in s. 941.23 (1) (h),
 17 to whom s. 941.23 (2) (f) applies.

18 ~~SECTION 4.~~ 167.31 (4) (ar) of the statutes is created to read:

19 167.31 (4) (ar) Subsections (2) (a) and (b) and (3) (a) and (b) do not apply to the
 20 placement, possession, or transportation of a firearm by any of the following:

21 1. A person who is employed as a law enforcement officer, as defined in s. 175.48
 22 (1) (c), and to whom s. 941.23 (2) (b) applies.

MRS FROM PAGE 9

1 2. A retired officer, as defined in s. 175.48 (1) (e), who is carrying a current
2 certification card issued under s. 175.48 (2) (a) or renewed under s. 175.48 (5) (a) and
3 to whom s. 941.23 (2) (c) applies.

4 3. A retired federal officer, as defined in s. 175.48 (1) (d), who is carrying a
5 current certification card issued under s. 175.48 (3) (a) or renewed under s. 175.48
6 (5) (a) and to whom s. 941.23 (2) (d) applies.

7 4. A retired out-of-state officer, as defined in s. 175.48 (1) (f), who is carrying
8 a current certification card issued under s. 175.48 (2) (a) or renewed under s. 175.48
9 (5) (a) and to whom s. 941.23 (2) (e) applies.

10 5. A retired nonresident law enforcement officer, as defined in s. 941.23 (1) (h),
11 to whom s. 941.23 (2) (f) applies.

12 **SECTION 5.** 175.48 of the statutes is created to read:

13 **175.48 Carrying of concealed weapons by retired law enforcement**
14 **officers. (1) DEFINITIONS.** In this section:

15 (a) "Department" means the department of justice. ✓

16 (b) "Law enforcement agency" includes the U.S. armed forces and the National
17 Guard.

18 (c) "Law enforcement officer" means a person who is employed by a law
19 enforcement agency for the purpose of engaging in, or supervising others engaging
20 in, the prevention, detection, investigation, or prosecution of, or the incarceration of
21 any person for, any violation of law and who has statutory powers of arrest. ✓

22 (d) "Retired federal officer" means a retired law enforcement officer who was
23 a law enforcement officer employed by a federal law enforcement agency and who
24 resides in Wisconsin. ✓

1 (e) "Retired officer" means a law enforcement officer who retired from a state
2 or local law enforcement agency in Wisconsin. ✓

3 (f) "Retired out-of-state officer" means a retired law enforcement officer who
4 was a law enforcement officer employed by a state or local law enforcement agency
5 in a state other than Wisconsin and who resides in Wisconsin. ✓

6 (2) CERTIFICATION OF RETIRED OFFICERS. (a) Upon the request of a retired officer,
7 the law enforcement agency that employed the retired officer shall, except as
8 provided in par. (b), request the department to issue the retired officer a certification
9 card as described in sub. (4) stating all of the following:

10 1. The type of firearm the person is certified to carry, but no person may be
11 certified to carry a machine gun, as defined in s. 941.27 (1), or a destructive device,
12 as defined in s. 941.23 (1) (b). ✓ *or a*

13 2. The retired officer has met the law enforcement agency's standards for
14 training and qualification for law enforcement officers to carry a firearm ~~specified~~
15 *in* *under* *of the type* subd. 1. ✓

16 3. The date on which the law enforcement agency made the finding under subd.
17 2. and an expiration date that is 12 months later than that date. ✓

18 4. That, due to the finding under subd. 2., the retired officer is qualified to carry
19 a concealed firearm of the type under subd. 1.

20 (b) The law enforcement agency may not request the department to issue the
21 retired officer a certification card under par. (a) unless the law enforcement agency
22 first verifies all of the following:

23 1. At the time of retiring, the person was employed as a law enforcement officer. ✓

24 2. The retired officer retired in good standing from service as a law enforcement
25 officer for reasons other than mental instability. ✓

1 3. The retired officer was regularly employed as a law enforcement officer for
2 an aggregate of 15 or more years of service or the retired officer retired from law
3 enforcement service due to a service-connected disability, as determined by the
4 retired officer's employer, after completing any applicable probationary period. ✓

5 4. The retired officer has a nonforfeitable right to benefits under the retirement
6 plan of the law enforcement agency. ✓

7 5. The retired officer is not prohibited under federal law from possessing a
8 firearm as indicated by a search of the transaction information for management of
9 enforcement system and the national crime information center system. ✓

10 (c) A law enforcement agency may require a person to provide information and
11 to consent in writing for release of information to enable the law enforcement agency
12 to verify the information in par. (b) and for the release of information to enable the
13 law enforcement agency to verify the information for any renewal under sub. (5). ✓

14 (d) A law enforcement agency may require a person to pay a fee, not to exceed
15 the lesser of the agency's costs or \$100, for the issuing the card under par. (a) and for
16 the verification requirements under par. (b). ✓

17 **(3) CERTIFICATION OF RETIRED FEDERAL OR OUT-OF-STATE OFFICERS.** (a) Upon the
18 request of a retired federal officer or a retired out-of-state officer, the department
19 shall, except as provided in par. (b), issue the retired federal officer or retired
20 out-of-state officer a certification card as described in sub. (4) stating all of the
21 following:

22 1. The type of firearm the person is certified to carry, but no person may be
23 certified to carry a machine gun, as defined in s. 941.27(1), or a destructive device,
24 as defined in s. 941.23 (1) (b). *pra*

[of the type
under

1 2. The person has met the state's standards for training and qualification for
2 law enforcement officers to carry a firearm specified in subd. 1. To make that
3 determination, the department shall accept certification under s. 165.85 (5) (am). ✓

4 3. The date on which the law enforcement agency made the finding under subd.
5 2. and an expiration date that is 12 months later than that date. ✓

6 4. That, due to the finding under subd. 2., the person is qualified to carry a
7 concealed firearm of the type under subd. 1. ✓

8 (b) The department may not issue the federal retired officer or out-of-state
9 retired officer a certification card under par. (a) unless the department first verifies
10 all of the following:

11 1. At the time of retiring, the person was employed as a law enforcement officer. ✓

12 2. The person retired in good standing from service as a law enforcement officer
13 for reasons other than mental instability. ✓

14 3. The officer was regularly employed as a law enforcement officer for an
15 aggregate of 15 or more years of service or the officer retired from law enforcement
16 service due to a service-connected disability, as determined by the officer's employer,
17 after completing any applicable probationary period. ✓

18 4. The officer has a nonforfeitable right to benefits under the retirement plan
19 of the law enforcement agency. ✓

20 5. The officer is not prohibited under federal law from possessing a firearm as
21 indicated by a search of the transaction information for management of enforcement
22 system and the national crime information center system. ✓

23 (c) The department may require a person to provide information and to consent
24 in writing for release of information to enable the department to verify the

1 information in par. (b) and for the release of information to enable the department
2 to verify the information for any renewal under sub. (5).

3 (d) The department may require a person to pay a fee, not to exceed the lesser
4 of the department's costs or \$100, for the issuing the card under par. (a) and for the
5 verification requirements under par. (b).

6 (4) CERTIFICATION CARDS. (a) Subject to pars. (b), (c), (d), and (e) and subs. (2)
7 (a) and (3) (a), the department shall design a certification card to be issued by the
8 department under sub. (2) (a), per the request of the law enforcement agency, or
9 under sub. (3) (a).

10 (b) A certification card shall contain all of the following on one side:

11 1. The full name, date of birth, and residence address of the person who holds
12 the certification card.

13 2. A photograph of the certification card holder and a physical description that
14 includes sex, height, weight, and hair and eye color.

15 3. The name of this state.

16 (c) A certification card shall include a statement that the certification of the
17 certification card holder does not confer any law enforcement authority on him or her
18 and does not make the certification card holder an employee or agent of the certifying
19 agency or department.

20 (d) A certification card may not contain the certification card holder's social
21 security number.

22 (e) The information on the certification card shall be included in substantially
23 the same way that the information is included on an operator's license document
24 issued under s. 343.17.

1 (5) RENEWAL OF LICENSES. (a) The department shall design a ~~form~~ notice of
 2 expiration and a renewal form ^{and} shall distribute the form to any law enforcement
 3 agency who ~~issues~~ ^{requests} certification cards under sub. (2). At least 90 days before the
 4 expiration of a certification card, the department or the law enforcement agency, if
 5 the law enforcement agency requested the department to issue the current
 6 certification card under sub. (2), shall mail the notice of expiration and renewal form
 7 to the certification card holder. The department shall renew the certification card
 8 by issuing a new certification card that meets the requirements under sub. (4) and
 9 that has an expiration date of 12 months after the expiration date of the current
 10 certification card, if, before the date the certification card expires, all of the following
 11 apply:

- 12 1. The certification card holder returns the renewal form. ✓
- 13 2. The certification card holder pays any fee required under par. (b). ✓
- 14 3. The certification card holder includes a notarized document attesting to the
 15 type of firearm he or she is certified to carry and that he or she meets the standards
 16 for training and qualification under sub. (2) (a) 2., if the holder is a retired officer, or
 17 under sub. (3) (a) 2., if the holder is a retired federal officer or a retired out-of-state
 18 officer. ✓
- 19 4. The law enforcement agency verifies sub. (2) (b) 5., if the certification card
 20 holder is a retired officer, or the department verifies sub. (2) (b) 5., if the certification
 21 card holder is a retired federal officer or a retired out-of-state officer, and the
 22 certification card holder provides any information necessary for the verification.

23 (b) The department may require a person to pay a fee, not to exceed the lesser
 24 of the department's costs or \$50, for issuing a renewal card under par. (a) and for the
 25 verification ^(CS) requirements under par. (a). ✓

① → (6) FEES. Payments made to the department under sub. appropriation
 (2)(d), (3)(d), or (5)(b) shall be credited to the appropriator.
 under S. 20.455 (2)(g4) ①

move
to pg
2

1 SECTION ~~6~~ 165.85 (5) (am) of the statutes is created to read:

2 165.85 (5) (am) The board shall provide training and qualification standards,
3 as well as a certification process for persons who have retired from a law enforcement
4 agency, as defined in s. 175.48 (1) (b), to comply with s. 175.48 (2) (a) 2., (3) (a) 2., or
5 (5) (a) 3., whichever is appropriate. The training and qualification standards should
6 be as similar as possible to the standards in sub. (3) (b), (c), and (d).

7 SECTION 7. 941.23 of the statutes *(is renumbered 941.23 (2) (intro.) and*
8 amended to read:

9 941.23 (2) Any person ~~except a peace officer other than one of the following~~ who
10 goes armed with a concealed and dangerous weapon is guilty of a Class A
11 misdemeanor. ~~Notwithstanding:~~

12 (a) A peace officer, but notwithstanding s. 939.22 (22), for purposes of this
13 section paragraph, peace officer does not include a commission warden who is not a
14 state-certified commission warden.

History: 1977 c. 173; 1979 c. 115, 221; 2007 a. 27.

15 SECTION 8. 941.23 (1) of the statutes is created to read:

16 941.23 (1) In this section:

17 (a) "Destructive device" means any of the following but does not include an
18 exempt device:

19 1. A bomb, a grenade, a rocket having a propellant charge of more than 4
20 ounces, a missile having an explosive or incendiary charge of more than 0.25 ounce,
21 a mine, or any similar device.

22 2. Any type of weapon, other than a shotgun or a shotgun shell that the U.S.
23 department of justice finds is generally recognized as particularly suitable for
24 sporting purposes, that expels, or that may be readily converted to expel, a projectile

1 by the action of an explosive or other propellant and that has a barrel with a bore of
2 more than 0.5 inch in diameter. ✓

3 3. Any combination of parts that is designed for converting, or intended for use
4 in converting, any device into a device described in subd. 1. or 2. and from which a
5 device described in subd. 1. or 2. may be readily assembled. ✓

6 (b) "Exempt device" means any of the following:

7 1. A device that is neither designed nor redesigned for use as a weapon. ✓

8 2. A device that, although originally designed for use as a weapon, is redesigned
9 for use as a signaling, pyrotechnic, line throwing, safety, or similar device. ✓

10 3. Surplus ordnance sold, loaned, or given by the U.S. secretary of the army
11 under 10 USC 4684 (2), 4685, or 4686. ✓

12 4. Any other device that the U.S. department of justice finds is not likely to be
13 used as a weapon, is an antique, or is a rifle that the owner intends to use solely for
14 sporting, recreational, or cultural purposes. ✓

15 (c) "Law enforcement agency" includes the U.S. armed forces and the National
16 Guard. ✓

17 (d) "Firearm silencer" has the meaning given in s. 941.298 (1). ✓
bm

18 (e) "Law enforcement officer" has the meaning given in s. 175.48 (1) (c). ✓

19 (f) "Machine gun" has the meaning given in s. 941.27 (1). ✓

20 (g) "Retired federal officer" has the meaning given in s. 175.48 (1) (d). ✓

21 (h) "Retired nonresident law enforcement officer" means a person who, before
22 retiring, was employed as a law enforcement officer with a law enforcement agency
23 and who does not reside in Wisconsin. ✓

24 (i) "Retired officer" has the meaning given in s. 175.48 (1) (e). ✓

25 (j) "Retired out-of-state officer" has the meaning given in s. 175.48 (1) (f). ✓

1 **SECTION 9.** 941.23 (2) (b), (c), (d), (e) and (f) of the statutes are created to read:

2 941.23 (2) (b) A law enforcement officer who is carrying a firearm and who is
3 employed by a law enforcement agency if all of the following apply: ✓

4 1. The law enforcement agency that employs him or her has authorized him or
5 her to carry a firearm. ✓

6 2. He or she is carrying the photographic identification issued by the law
7 enforcement agency that employs him or her. ✓

8 3. He or she is not the subject of any disciplinary action by the law enforcement
9 agency that employs him or her. ✓

10 4. He or she meets all standards established by the law enforcement agency to
11 qualify on a regular basis to use a firearm. ✓

12 5. He or she is not prohibited under federal law from possessing a firearm. ✓

13 6. The firearm is not a machine gun or a destructive device. ✓

14 7. A firearm silencer is not attached to the firearm. ✓

15 8. He or she is not under the influence of an intoxicant. ✓

16 (c) A retired officer if all of the following apply:

17 1. He or she is carrying a valid certification card issued under s. 175.48 (2) (a) ✓
18 or renewed under s. 175.48 (5) (a). ✓

19 2. The weapon is a firearm and is a type that is listed on the valid certification
20 card. ✓

21 3. A firearm silencer is not attached to the firearm. ✓

22 4. He or she is not under the influence of an intoxicant. ✓

23 5. He or she is not prohibited under federal law from possessing a firearm. ✓

24 (d) A retired federal officer if all of the following apply:

1 1. He or she is carrying a valid certification card issued under s. 175.48 (3) (a)
2 or renewed under s. 175.48 (5) (a). ✓

3 2. The weapon is a firearm and is a type that is listed on the valid certification
4 card. ✓

5 3. A firearm silencer is not attached to the firearm. ✓

6 4. He or she is not under the influence of an intoxicant. ✓

7 5. He or she is not prohibited under federal law from possessing a firearm. ✓

8 (e) A retired out-of-state officer if all of the following apply:

9 1. He or she is carrying a valid certification card issued under s. 175.48 (3) (a). ✓

10 2. The weapon is a firearm and is a type that is listed on the valid certification
11 card. ✓

12 3. A firearm silencer is not attached to the firearm. ✓

13 4. He or she is not under the influence of an intoxicant. ✓

14 5. He or she is not prohibited under federal law from possessing a firearm. ✓

15 (f) A retired nonresident law enforcement officer if all of the following apply:

16 1. He or she is carrying one of the following:

17 a. A photographic identification issued by the law enforcement agency from
18 which he or she retired from service as a law enforcement officer that indicates that
19 the or she has, not more than one year before the date he or she is carrying the
20 firearm, ^{been} found by the law enforcement agency to meet any standards established by
21 the law enforcement agency for training and qualification for active law enforcement
22 officers to carry a firearm of the same type that he or she is carrying. ✓

23 b. A photographic identification issued by the law enforcement agency from
24 which he or she retired from service as a law enforcement officer and a certification
25 issued by the state in which he or she resides that indicates that he or she has, not

1 more than one year before the date he or she is carrying the firearm, been found by
2 the state to meet the standards established by the state for training and qualification
3 for active law enforcement officers to carry a firearm of the same type that he or she
4 is carrying. ✓

5 2. The weapon is a firearm but is not a machine gun or a destructive device. ✓

6 3. A firearm silencer is not attached to the weapon. ✓

7 4. He or she is not under the influence of an intoxicant. ✓

8 5. He or she is not prohibited under federal law from possessing a firearm. ✓

9 SECTION 10. 941.237 (3) (cr), (L), (m), (n) and (o) of the statutes are created to
10 read:

11 941.237 (3) (cr) A person who is employed as a law enforcement officer, as
12 defined in s. 175.48 (1) (c), and to whom s. 941.23 (2) (b) applies.

13 (L) A retired officer, as defined in s. 175.48 (1) (e), who is carrying a current
14 certification card issued under s. 175.48 (2) (a) and to whom s. 941.23 (2) (c) applies. *or renewed under s. 175.48 (5) (a) 3x ✓*

15 (m) A retired federal officer, as defined in s. 175.48 (1) (d), who is carrying a
16 current certification card issued under s. 175.48 (3) (a) and to whom s. 941.23 (2) (d)
17 applies.

18 (n) A retired out-of-state officer, as defined in s. 175.48 (1) (f), who is carrying
19 a current certification card issued under s. 175.48 (2) (a) and to whom s. 941.23 (2)
20 (e) applies. ✓ *3*

21 (o) A retired nonresident law enforcement officer, as defined in s. 941.23 (1) (h),
22 to whom s. 941.23 (2) (f) applies. ✓

23 SECTION 11. 941.29 (10) (c), (d), (e) and (f) of the statutes are created to read:

24 941.29 (10) (c) *The* A person who is employed as a law enforcement officer, as
25 defined in s. 175.48 (1) (c), and to whom s. 941.23 (2) (b) applies. *to him or her*

SECTION 11

The person is

or renewed under s. 175.48 (5)(a)

(4x) to him or her

1 (d) A retired officer, as defined in s. 175.48 (1) (e), who is carrying a current
2 certification card issued under s. 175.48 (2) (a) and to whom s. 941.23 (2) (c) applies.

3 (e) A retired federal officer, as defined in s. 175.48 (1) (d), who is carrying a
4 current certification card issued under s. 175.48 (3) (a) and to whom s. 941.23 (2) (d)
5 applies.

6 (f) A retired out-of-state officer, as defined in s. 175.48 (1) (f), who is carrying
7 a current certification card issued under s. 175.48 (2) (a) and to whom s. 941.23 (2)
8 (e) applies.

9 (g) A retired nonresident law enforcement officer, as defined in s. 941.23 (1) (h), and
10 to whom s. 941.23 (2) (f) applies. ✓

11 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3780/2dn

CMH:.....

mtc

(date)

(10)
I made this draft a preliminary draft because I anticipate you may want to review it and make changes. It can be redrafted quickly as an introducible draft. Please review the draft, especially my renewal provisions under s. 175.48 (5) and my changes to s. 941.29. My understanding is that federal law would preempt such restrictions per 18 USC 926B (a) and 926C (a).

I separated the treatments of retired federal officers and retired non-Wisconsin officers because notes in your instructions indicated distinct treatments for each. I am not sure of the intended distinction.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.wisconsin.gov

91
I will incorporate the immunity provisions from Bob Nelson's draft in the next version of this draft. Depending on your changes, that draft may need changing.

KCT 6-7461
MUR

Section 1. 175.48 of the statutes is created to read:

175.48 Carrying of concealed firearms by active and retired law enforcement officers

(1) DEFINITIONS. In this section:

(a) "Department" means the department of justice.

(b) "Former employer" means a law enforcement agency that employed a retired law enforcement officer immediately before his or her retirement.

(c) "Law enforcement officer" means a person who is employed by a public agency in the United States for the purpose of engaging in, or supervising others engaging in, the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and who has statutory powers of arrest.

Comment: Intended to track definition in the federal legislation.

(d) "Qualified active law enforcement officer" means a law enforcement officer to whom all of the following apply:

1. The agency employing the officer has authorized the officer to carry a firearm.
2. The officer is not the subject of any disciplinary action by the agency.
3. The officer meets all standards established by the agency to regularly qualify the officer to use a firearm.
4. The officer is not prohibited under federal law from receiving a firearm.

Comment: Intended to track definition in the federal legislation.

(e) "Qualified retired law enforcement officer" means a person to whom all of the following apply:

1. At the time of retiring, the person was employed as a law enforcement officer with a public agency.
2. The person retired in good standing from service as a law enforcement officer for reasons other than mental instability.
3. The person either was regularly employed as a law enforcement officer for an aggregate of at least 15 years or, after completing any applicable probationary period of service, retired due to a service-connected disability, as determined by the person's former employer.

1
2 4. The person has a nonforfeitable right to benefits under the former
3 employer's retirement plan.

4
5 5. The person is not prohibited under federal law from possessing a firearm.

6
7 *Comment: Intended to track definition in the federal legislation.*

8
9 (f) "Retired federal officer" means a qualified retired law enforcement officer whose
10 former employer is a United States government law enforcement agency.

11
12 *Comment: This bill gives distinct treatment to retired federal officers. A definition of
13 that category is, therefore, needed.*

14
15 (g) "Retired non-Wisconsin state officer" means a qualified retired law enforcement
16 officer whose former employer is a state or local law enforcement agency in a
17 state other than Wisconsin.

18
19 *Comment: This bill gives distinct treatment to retired officers who previously worked for
20 a state or local law enforcement agency in another state. A definition of that category is,
21 therefore, needed.*

22
23 (h) "Retired Wisconsin officer" means a qualified retired law enforcement officer
24 whose former employer is a Wisconsin law enforcement agency.

25
26 *Comment: This bill gives distinct treatment to retired officers who retired from a law
27 enforcement agency in Wisconsin. A definition of that category is, therefore, needed.*

28
29 (i) "Wisconsin law enforcement agency" has the meaning given in sec. 175.46(1)(f)

30
31 (2) CERTIFICATION OF RETIRED WISCONSIN OFFICERS. *SMALL*

32
33 (a) Upon request by a retired Wisconsin officer, that retired officer's former
34 employer, subject to sub. (b), may issue that retired officer a certification card that
35 contains the information specified in sub. (4)(a) and that certifies all of the
36 following:

37
38 *Comment: This subsection provides for retired Wisconsin officers to receive firearm
39 certification only from the officer's former employing agency*

40
41 1. The type of firearm to which the certification applies.

42
43 *Comment: Specifying the type of firearm tracks the federal legislation.
44 Unfortunately, the federal legislation does not explain what "type of firearm" is
45 intended to mean in this context.*

46
47 2. That the former employer has found that the retired officer has met the
48 former employer's standards for training and qualification for active duty

1 law enforcement officers to carry a firearm of the type identified in par. 1.
2 In making that determination, the former employer may accept written
3 evidence of the retired officer's performance in training or testing
4 administered by a firearms instructor certified by the law enforcement
5 standards board under sec. 165.85(5)(a).
6

7 *Comment: The certification standard that each law enforcement agency will*
8 *apply to its own retirees is that agency's own firearm standard for its active*
9 *officers. The bill leaves individual agencies with discretion to decide for*
10 *themselves how to go about determining whether an individual retiree meets that*
11 *standard.*
12

- 13 3. The date on which the former employer made the finding under par. 2 and
14 an expiration date 12 months later.
15

16 *Comment: This implements the federal requirement that certification of retirees*
17 *take place annually.*
18

- 19 4. That, as a result of the finding under par. 2., the retired officer is qualified
20 to carry a concealed firearm of the type identified in par. 1.
21

- 22 ? (b) Before issuing a certification card to any person under par. (a), a Wisconsin law
23 enforcement agency shall do all of the following:
24

- 25 1. Verify the person's employment history and retirement plan status under
26 sub. (1) (e) 1. to 4.
27

28 *Comment: The bill leaves individual agencies with discretion to decide for*
29 *themselves how to go about making this determination.*
30

- 31 2. Determine, from the records of the transaction information for
32 management of enforcement system and the national crime information
33 center system, that the person is not prohibited from receiving a firearm
34 under federal law.
35

- 36 ? (c) A Wisconsin law enforcement agency may require a person to provide
37 appropriate information and to sign appropriate consents for release of
38 information to enable the agency to confirm that the person meets all of the
39 prerequisites under this section for the agency to act under par. (a).
40

- 41 ? (d) A Wisconsin law enforcement agency may require a person to pay a fee for
42 performing the actions required under par. (a) and (b). This fee shall not exceed
43 the agency's costs for performing those actions.
44
45
46
47

1 (3) CERTIFICATION OF RETIRED FEDERAL OFFICERS.

- 2
3 (a) Upon request by a retired federal officer who resides in Wisconsin, the
4 department, subject to par. (b), may issue that retired officer a certification card
5 that contains the information specified in sub. (4)(a) and that certifies all of the
6 following:

7
8 *Comment: This subsection provides for retired federal officers to receive firearm*
9 *certification from DOJ. Under this bill, retired federal officers who live in Wisconsin are*
10 *the only group, other than agents of the Division of Criminal Investigation, that would be*
11 *certified by DOJ.*

- 12
13 1. The type of firearm to which the certification applies.

14
15 *Comment: Specifying the type of firearm tracks the federal legislation.*
16 *Unfortunately, the federal legislation does not explain what "type of firearm" is*
17 *intended to mean in this context.*

- 18
19 2. That the department has found that the retired officer has met the state of
20 Wisconsin's standards for training and qualification for active duty law
21 enforcement officers to carry a firearm of the type identified in par. 1. In
22 making that determination, the department may accept written evidence of
23 the retired officer's performance in training or testing administered by a
24 firearms instructor certified by the law enforcement standards board under
25 sec. 165.85(5)(a). For purposes of this paragraph, the above standards
26 shall be the firearm standards that a recruit must meet in order to be
27 admitted to employment in Wisconsin as a certified law enforcement
28 officer, as established by the law enforcement standards board under sec.
29 165.85(3)(b), (c) and (d).

30
31 *Comment: The certification standard that DOJ will apply to retired federal*
32 *officers is the state of Wisconsin's firearm standard for law enforcement recruits.*
33 *The bill leaves DOJ with discretion to decide for itself how to go about*
34 *determining whether an individual retiree meets that standard.*

- 35
36 3. The date on which the department made the finding under par. 2 and an
37 expiration date 12 months later.

38
39 *Comment: This implements the federal requirement that certification of retirees*
40 *take place annually.*

- 41
42 4. That, as a result of the finding under par. 2., the retired officer is qualified
43 to carry a concealed firearm of the type identified in par. 1.

- 44
45 (b) Before issuing a certification card to any person under par. (a), the department
46 shall do all of the following:

- 1
2
3
4
5
6
7
8
1. Verify the person's employment history and retirement plan status under sub. (1) (e) 1. to 4.

Comment: The bill leaves DOJ with discretion to decide for itself how to go about making this determination. Under par. (c) below, DOJ may require a retiree to submit any information it may need in order to make the required determinations.

- 9
10
11
12
13
2. Determine, from the records of the transaction information for management of enforcement system and the national crime information center system, that the person is not prohibited from possessing a firearm under federal law.

14
15
16
17
18

(c) The department may require a person to provide appropriate information and to sign appropriate consents for release of information to enable the department to confirm that the person meets all of the prerequisites under this section for the department to act under par. (a).

19
20
21

(d) The department may require a person to pay a fee, not to exceed the department's costs, for performing the actions required under par. (a) and (b).

22 (4) CERTIFICATION CARDS.

23
24
25
26
27

(a) In addition to the information certified under sub. (2)(a) or (3)(a), a certification card issued under this section shall contain all of the following on one side:

- 28
29
30
31
32
1. The full name, date of birth, and residence address of the retired officer.
 2. A photograph of the retired officer and a physical description, including sex, height, weight, and hair and eye color.

33
34
35

Comment: This paragraph requires the certification cards to include a photograph of the retired officer.

- 36
37
38
39
3. The name of the law enforcement agency issuing the card.
 4. The name of this state.

40
41

(b) A certification card may not contain the retired officer's social security number.

42
43
44
45
46

(c) All certification cards issued under this section shall include a statement that the possession of the certification card does not confer any law enforcement authority on the bearer and does not make the bearer an employee or agent of the certifying agency for any purpose.

1 (d) The contents of the certification card shall be included in the document in
2 substantially the same way that the contents of an operator's license document
3 issued under s. 343.17 are included in that document.
4

- 5 (5) Subject to subs. (6), (7), (8), and (9), the prohibitions in ss. 23.33(3)(e), 167.31, 941.23
6 and 941.237, as they relate to the carrying of a concealed firearm, do not apply to a
7 qualified active law enforcement officer or a qualified retired law enforcement officer.
8

9 *Comment:* This paragraph incorporates into Wisconsin's statutes the preemption of state
10 concealed carry restrictions by H.R. 218. Strictly speaking, the paragraph is not necessary
11 because, even without it, the preemption would take place by virtue of the federal legislation. It
12 is nevertheless desirable for Wisconsin's statutes to expressly acknowledge that certain statutes
13 otherwise restricting the carrying of concealed firearms will no longer apply to qualified active
14 or retired law enforcement officers who carry the requisite credentials. It may be desirable to
15 also include corresponding cross-references in each of the affected statutes, but such cross-
16 references have not been included in this draft.

17 In addition to Wisconsin's general concealed carry prohibition (§ 941.23), the
18 enumerated statutes include those: restricting the possession of a firearm when operating an all-
19 terrain vehicle (§ 23.33(3)(e)); restricting the possession or use of a firearm in a motorized
20 vehicle (§ 167.31); and restricting the possession of a handgun in establishments where alcohol
21 is sold and consumed (§ 941.237).

22 An earlier draft of this proposal also included several other statutes that restrict the
23 possession of firearms in state parks and wildlife refuges (§§ 29.089, 29.091 and 29.621) and in
24 public buildings (§ 941.235). Those statutes have been excluded from this draft because the
25 federal legislation actually does not preempt state laws that restrict the carrying of a concealed
26 firearms in those public places. Final bill authors could consider adding these sections back in.

27 The earlier draft also included the Wisconsin statute restricting the possession of
28 firearms in a school zone (§ 948.605). That statute has been excluded from this draft because the
29 federal legislation actually does not preempt state laws that restrict the carrying of a concealed
30 firearm on public school property or on the property of a private school that itself lawfully
31 restricts the possession of firearms on its own property. However, the federal law arguably does
32 preempt state firearm restrictions in those parts of a school zone that are not within the
33 boundaries of the school's own property. That preemption is not expressly incorporated into this
34 bill in its current form.

35 In addition, the earlier draft included the Wisconsin statute that makes it a crime for
36 certain persons to possess a firearm (§ 941.29). That statute appears to contain some firearm
37 restrictions that have no counterpart in federal law—e.g. § 941.29 may cover a wider range of
38 injunctions and restraining orders than are covered by federal law. In any event, to the extent, if
39 any, that H.R. 218 may permit firearm possession by some persons who would otherwise be
40 prohibited under § 941.29, any possible preemption of such state prohibition by H.R. 218 is not
41 expressly incorporated into this bill in its current form.
42

- 43 (6) The exemption in sub. (5) applies to a qualified active law enforcement officer only if the
44 officer, while carrying a concealed firearm, also carries an identification card that
45 contains his or her photograph and that was issued by the law enforcement agency by
46 which he or she is employed.
47

48 *Comment:* This tracks the federal legislation's credential requirements for active officers.
49

1 (7) The exemption in sub. (5) applies to a retired non-Wisconsin state officer or a retired
2 federal officer only if one of the following applies:

- 3
4 (a) The retired officer, while carrying a concealed firearm, is also carrying a
5 photographic identification document issued by the retired officer's former
6 employer that indicates that, within the 12 months preceding the date on which
7 the retired officer is carrying the concealed firearm, he or she was tested or
8 otherwise found by the former employer to meet that employer's standards for
9 training and qualification for active duty law enforcement officers to carry a
10 firearm of the same type as the firearm that the retired officer is carrying.

11
12 *Comment: This paragraph allows a retired federal officer or a retired out-of state*
13 *officer to carry if the officer possesses certification issued by the officer's former*
14 *employing agency.*

- 15
16 (b) The retired officer is a retired federal officer who resides in Wisconsin and, while
17 carrying a concealed firearm, is also carrying a certification card issued by the
18 department under sub. (3).

19
20 *Comment: This paragraph implements the state certification option for retired federal*
21 *officers who live in Wisconsin.*

- 22
23 (c) The retired officer resides outside of Wisconsin and, while carrying a concealed
24 firearm, is also carrying a photographic identification document issued by the
25 retired officer's former employer and a certification issued by the state in which
26 the retired officer resides indicating that, within the 12 months preceding the date
27 on which the retired officer is carrying the concealed firearm, he or she was tested
28 or otherwise found by that state to meet the state's standards for training and
29 qualification for active duty law enforcement officers to carry a firearm of the
30 same type as the firearm that the retired officer is carrying.

31
32 *Comment: This paragraph implements H.R. 218's provisions for retired federal officers*
33 *and retired out-of-state officers who do not reside in Wisconsin.*

34
35 (8) The exemption in sub. (5) applies to a retired Wisconsin officer only if one of the
36 following applies:

- 37
38 (a) The retired officer, while carrying a concealed firearm, is also carrying a
39 certification card issued under sub. (2).

40
41 *Comment: This paragraph implements the local certification option for retired*
42 *Wisconsin officers.*

- 43
44 (b) The retired officer resides outside of Wisconsin and, while carrying a concealed
45 firearm, is also carrying a photographic identification document issued by the
46 retired officer's former employer and a certification issued by the state in which
47 the retired officer resides indicating that, within the 12 months preceding the date

1 on which the retired officer is carrying the concealed firearm, he or she was tested
2 or otherwise found by that state to meet the state's standards for training and
3 qualification for active duty law enforcement officers to carry a firearm of the
4 same type as the firearm that the retired officer is carrying.

5
6 *Comment: This paragraph recognizes that a retired Wisconsin officer who lives in*
7 *another state may obtain firearm certification from that state, as permitted under the*
8 *federal legislation.*

9
10 (9) The exemption in sub. (5) applies only if all of the following apply:

- 11
12 (a) The firearm carried by the officer or retired officer is not a machine gun or a
13 destructive device as defined in 18 U.S.C. 921.
14
15 (b) A firearm silencer, as defined in 18 U.S.C. 921, is not attached to the firearm.
16
17 (c) The officer or retired officer is not under the influence of an intoxicant.

18
19 *Comment: This subsection incorporates requirements of the federal legislation.*

20
21 (10) The department may promulgate rules to implement and administer this section.

22
23
24
25 **Section 2.** 895.60 of the statutes is created to read:

26
27 **895.60 Immunity from civil liability for firearm certification of retired law**
28 **enforcement officers**

29
30 (1) In addition to any other common law immunity or statutory immunity, no suit may be
31 brought against the state or any governmental subdivision or agency thereof or against
32 any officer, agent or employee of any of those entities for any liability arising from any
33 of the following:

- 34
35 (a) Any act or omission under s. 175.48.
36
37 (b) The use of a firearm by a qualified retired law enforcement officer, as defined in
38 s. 175.48(1)(e), to whom s. 175.48 (5) applies.

39
40 (2) Paragraph (1) does not apply to a suit that seeks only to require a Wisconsin law
41 enforcement agency to comply with the provisions of s. 175.48.

42
43 *Comment: This paragraph seeks to ensure that the immunity provision does not render the*
44 *proposed new statute legally unenforceable.*

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3780/P1dn
CMH:lmk:pg

January 23, 2008

I made this draft a preliminary draft because I anticipate you may want to review it and make changes. It can be redrafted quickly as an introducible draft. Please review the draft, especially my renewal provisions under s. 175.48 (5) and my changes to s. 941.29 (10). My understanding is that federal law would preempt such restrictions per 18 USC 926B (a) and 926C (a).

I separated the treatments of retired federal officers and retired non-Wisconsin officers because notes in your instructions indicated distinct treatments for each. I am not sure of the intended distinction.

I will incorporate the immunity provisions from Bob Nelson's draft in the next version of this draft. Depending on your changes, that draft may need changing.

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