



2017 SENATE BILL 34

February 9, 2017 - Introduced by Senators JOHNSON, CARPENTER, C. LARSON, MILLER, RISSER and L. TAYLOR, cosponsored by Representatives BERCEAU, C. TAYLOR, ANDERSON, BILLINGS, BOWEN, BROSTOFF, CROWLEY, FIELDS, GOYKE, HESSELBEIN, KOLSTE, OHNSTAD, RIEMER, SARGENT, SINICKI, SPREITZER, SUBECK, WACHS, YOUNG and ZAMARRIPA. Referred to Committee on Judiciary and Public Safety.

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

Analysis by the Legislative Reference Bureau

Current law provides that certain 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 any firearm unless the sale or transfer occurs through a federally licensed firearms dealer and involves a background check of the prospective

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transferee. Under this bill, the following are excepted from that prohibition: a sale or transfer to a firearms dealer, to law enforcement, or to a member of the armed services; a sale or transfer of a firearm classified as antique; 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; 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.

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

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

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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) 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 restrictions 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

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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. 813.128 (3g), and a search to determine whether
4 the person is prohibited from possessing a firearm under s. 813.123 (5m) or 813.125
5 (4m).

6 **SECTION 5.** 175.35 (1) (b) of the statutes is repealed.

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

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

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

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

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

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

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

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

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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. and 3. requiring the transferee to
7 provide his or her name, date of birth, gender, race and social security number, and
8 other identification necessary to permit an accurate firearms restrictions record
9 search under par. (c) 3. and the required notification under par. (c) 4. The department
10 of justice shall make the forms available at locations throughout the state.

11 **SECTION 12.** 175.35 (2i) of the statutes is renumbered 175.35 (2i) (a) and
12 amended to read:

13 175.35 **(2i)** (a) The department shall charge a firearms dealer a \$10 fee for each
14 firearms restrictions record search that the firearms dealer requests under sub. (2)
15 (e) (cm) 3.

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

17 (c) The department may refuse to conduct firearms restrictions record searches
18 for any firearms dealer who fails to pay any fee under ~~this subsection~~ par. (a) within
19 30 days after billing by the department.

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

21 175.35 **(2i)** (b) 2. If the transfer is made under sub. (2) (bm), the firearms dealer
22 may collect from the transferor the fee under par. (a) and any additional amount to
23 cover any costs he or she incurs in processing the transfer.

24 **SECTION 14.** 175.35 (2j) of the statutes is renumbered 175.35 (2j) (a).

25 **SECTION 15.** 175.35 (2j) (b) of the statutes is created to read:

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1 175.35 (2j) (b) If a person sells a firearm or transfers ownership of a firearm
2 through a firearms dealer under sub. (2) (bm), or sells a firearm or transfers
3 ownership of a firearm to a firearms dealer, the firearms dealer shall provide the
4 person a written receipt documenting the dealer's participation in the sale or
5 transfer.

6 **SECTION 16.** 175.35 (2k) (ar) 2. of the statutes is amended to read:

7 175.35 (2k) (ar) 2. Check each notification form received under sub. (2j) (a)
8 against the information recorded by the department regarding the corresponding
9 request for a firearms restrictions record search under sub. (2g). If the department
10 previously provided a unique approval number regarding the request and nothing
11 in the completed notification form indicates that the transferee is prohibited from
12 possessing a firearm under s. 941.29, the department shall destroy all records
13 regarding that firearms restrictions record search within 30 days after receiving the
14 notification form.

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

16 175.35 (2k) (c) 2. a. A statement that the Wisconsin law enforcement agency
17 is conducting an investigation of a crime in which a ~~handgun~~ firearm was used or was
18 attempted to be used or was unlawfully possessed.

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

20 175.35 (2k) (c) 2. b. A statement by a division commander or higher authority
21 within the Wisconsin law enforcement agency that he or she has a reasonable
22 suspicion that the person who is the subject of the information request has obtained
23 or is attempting to obtain a ~~handgun~~ firearm.

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

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1 175.35 (2k) (g) If a search conducted under sub. (2g) indicates that the
2 transferee is prohibited from possessing a firearm under s. 941.29, the attorney
3 general or his or her designee ~~may~~ shall disclose to a law enforcement agency that
4 the transferee has attempted to obtain a ~~handgun~~ firearm.

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

6 175.35 (2k) (h) If a search conducted under sub. (2g) indicates a felony charge
7 without a recorded disposition and the attorney general or his or her designee has
8 reasonable grounds to believe the transferee may pose a danger to himself, herself
9 or another, the attorney general or his or her designee may disclose to a law
10 enforcement agency that the transferee has obtained or has attempted to obtain a
11 ~~handgun~~ firearm.

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

13 175.35 (2L) The department of justice shall promulgate rules providing for the
14 review of nonapprovals under sub. (2g) (c) 4. a. Any person who is denied the right
15 to purchase a ~~handgun~~ firearm because the firearms dealer received a nonapproval
16 number under sub. (2g) (c) 4. a. may request a firearms restrictions record search
17 review under those rules. If the person disagrees with the results of that review, the
18 person may file an appeal under rules promulgated by the department.

19 **SECTION 22.** 175.35 (2t) (a), (b) and (c) of the statutes are amended to read:

20 175.35 (2t) (a) Transfers of any ~~handgun~~ firearm classified as an antique by
21 regulations of the U.S. department of the treasury.

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

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

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1 **SECTION 23.** 175.60 (7) (d) of the statutes is amended to read:

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

4 **SECTION 24.** 175.60 (15) (b) 4. b. of the statutes is amended to read:

5 175.60 (15) (b) 4. b. A fee for a background check that is equal to the fee charged
6 under s. 175.35 (2i) (a).

7 **SECTION 25.** 938.208 (1) (b) of the statutes is amended to read:

8 938.208 (1) (b) Probable cause exists to believe that the juvenile possessed,
9 used or threatened to use a handgun, as defined in s. ~~175.35 (1) (b)~~ 941.237 (1) (d),
10 short-barreled rifle, as defined in s. 941.28 (1) (b), or short-barreled shotgun, as
11 defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony
12 under ch. 940 if committed by an adult.

13 **SECTION 26.** 938.34 (4m) (b) 2. of the statutes is amended to read:

14 938.34 (4m) (b) 2. The juvenile has possessed, used or threatened to use a
15 handgun, as defined in s. ~~175.35 (1) (b)~~ 941.237 (1) (d), short-barreled rifle, as
16 defined in s. 941.28 (1) (b), or short-barreled shotgun, as defined in s. 941.28 (1) (c),
17 while committing a delinquent act that would be a felony under ch. 940 if committed
18 by an adult.

19 **SECTION 27.** 938.341 of the statutes is amended to read:

20 **938.341 Delinquency adjudication; restriction on firearm possession.**

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

24 **SECTION 28.** 941.237 (1) (d) of the statutes is amended to read:

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

5 **SECTION 29.** 941.29 (1m) (dm), (dn) and (do) of the statutes are created to read:

6 941.29 (1m) (dm) The person has been convicted of a misdemeanor under s.
7 175.33 (3), unless at least 2 years have passed since the conviction.

8 (dn) The person has been adjudicated delinquent for a violation under s. 175.33
9 (3), unless at least 2 years have passed since the adjudication.

10 (do) The person has been found not guilty of a misdemeanor under s. 175.33 (3)
11 by reason of mental disease or defect, unless at least 2 years have passed since the
12 finding.

13 **SECTION 30.** 941.296 (1) (b) of the statutes is amended to read:

14 941.296 (1) (b) “Handgun” has the meaning given in s. ~~175.35 (1) (b)~~ 941.237
15 (1) (d).

16 **SECTION 31.** 968.20 (3) (b) of the statutes is amended to read:

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

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

16 **SECTION 32.** 971.17 (1g) of the statutes is amended to read:

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

21 **SECTION 33.** 973.176 (1) of the statutes is amended to read:

22 973.176 (1) FIREARM POSSESSION. Whenever a court imposes a sentence or
23 places a defendant on probation regarding a felony conviction or regarding a
24 conviction for a misdemeanor under s. 175.33 (3), the court shall inform the

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1 defendant of the requirements and penalties applicable to him or her under s. 941.29
2 (1m) or (4m).

3 **SECTION 34. Initial applicability.**

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

6 **SECTION 35. Effective date.**

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

9 (END)