



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBs0243/1
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ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 214

November 5, 2003 - Offered by Representatives STASKUNAS, POCAN, TRAVIS,
MOLEPSKE, ZIEGELBAUER and SINICKI.

1 **AN ACT** *to renumber and amend* 941.23; and *to create* 941.23 (1) and 941.23
2 (2) of the statutes; **relating to:** carrying or going armed with a concealed
3 weapon.

Analysis by the Legislative Reference Bureau

Under current law, no person other than a peace officer may go armed with a concealed and dangerous weapon. The “going armed with” language applies to, among others, cases in which a person is carrying a concealed weapon but has not gone and is not going anywhere with it and cases in which a weapon is readily accessible to — but not physically carried by — a person in a car. A person who violates the prohibition on going armed with a concealed and dangerous weapon may be fined not more than \$10,000 or imprisoned for not more than nine months or both. But under *State v. Hamdan*, 2003 WI 113, __ Wis. 2d __, it is unconstitutional to apply this prohibition to a person carrying a concealed weapon at his or her own business when: 1) the person’s interest in carrying a concealed weapon substantially outweighs the state’s interest in enforcing the concealed weapons law; 2) the person has no other reasonable means to keep and handle the weapon; and 3) the person is not motivated by an unlawful purpose in concealing it. The *Hamdan* court also indicated that the constitutional right to keep and bear arms for security must permit a person to carry a concealed weapon under certain circumstances in his or her own home.

This substitute amendment permits a person to go armed with a concealed and dangerous weapon in his or her own home or place of business if: 1) the person's interest in carrying a concealed weapon substantially outweighs the state's interest in enforcing the concealed weapons law; 2) the person has no other reasonable means to keep and handle the weapon; and 3) the person is not motivated by an unlawful purpose in concealing it. This authorization does not apply if the person is prohibited under federal or state law from possessing a firearm (prohibitions that apply if, for example, the person has been convicted of a misdemeanor crime of domestic violence or a felony; the person unlawfully uses a controlled substance; the person has been committed to a mental health facility; or the person is subject to a stalking, harassment, or domestic abuse restraining order or a harassment, domestic abuse, or child abuse injunction) or if the person, in an unrelated criminal case, has been prohibited from possessing a dangerous weapon as a condition of being released while the case is pending.

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

1 **SECTION 1.** 941.23 of the statutes is renumbered 941.23 (intro.) and amended
2 to read:

3 **941.23 Carrying concealed weapon.** (intro.) Any person ~~except a peace~~
4 ~~officer, other than one of the following,~~ who goes armed with a concealed and
5 dangerous weapon is guilty of a Class A misdemeanor.;

6 **SECTION 2.** 941.23 (1) of the statutes is created to read:

7 941.23 (1) A peace officer.

8 **SECTION 3.** 941.23 (2) of the statutes is created to read:

9 941.23 (2) (a) An individual who goes armed with a concealed and dangerous
10 weapon in his or her own dwelling or place of business if all of the following apply:

11 1. The individual's interest in going armed with the weapon substantially
12 outweighs the state's interest in enforcing this section.

13 2. The individual has no other reasonable means to keep and handle the
14 weapon.

