



2001 SENATE BILL 492

March 8, 2002 - Introduced by Senators BURKE, ERPENBACH and RISSER, cosponsored by Representative COLON. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1 **AN ACT to renumber** 175.35 (2) (a) to (d) and 175.35 (2j); **to renumber and**
2 **amend** 175.35 (2) (intro.) and 175.35 (3); **to amend** 29.921 (1), 29.931 (2) (a),
3 175.35 (1) (b), 175.35 (2g) (b), 175.35 (2g) (c) (intro.), 175.35 (2g) (c) 4. c., 175.35
4 (2i), 175.35 (2k) (ar) 2., 938.208 (1) (c), 938.34 (4m) (b) 3., 938.78 (3), 948.60
5 (title), 948.60 (1) and 968.255 (1) (a) 2.; and **to create** 175.33, 175.35 (2b),
6 175.35 (2c) (intro.), 175.35 (2j) (b), 175.35 (3) (a) and 948.59 of the statutes;
7 **relating to:** the sale and purchase of handguns, handgun purchaser
8 background checks, handgun possession by or handgun transfers involving
9 younger persons, and providing penalties.

Analysis by the Legislative Reference Bureau

Transfers of handguns generally

Under current law, no federally licensed firearms dealer may transfer a handgun following a sale until various requirements are met. These requirements include a firearms restrictions record search (background check) of the prospective handgun owner by the department of justice (DOJ) and a waiting period of 48 hours that begins running when DOJ gives the dealer confirmation that it has received the dealer's request for a background check. A firearms dealer who transfers a handgun

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in violation of the background check and 48-hour waiting period requirements must be fined not less than \$500 nor more than \$10,000 and may be imprisoned for not more than nine months. This bill increases the maximum term of imprisonment for such violations to five years.

This bill also establishes additional restrictions on the sale or transfer of ownership of handguns. In particular, the bill prohibits a person from selling or transferring ownership of a handgun, or purchasing or obtaining ownership of a handgun, unless: 1) one of the parties is a federally licensed firearms dealer; 2) the seller or transferor makes the sale or transfer to or through such a dealer; or 3) the seller or transferor is transferring ownership of the handgun by gift, bequest, or inheritance to another family member, and the other family member is legally permitted to possess it. In addition, under the bill, the background check and 48-hour waiting period requirements apply to any sale or transfer made through a dealer. A person who intentionally violates any of these new provisions must be fined not less than \$500 nor more than \$10,000 and may be imprisoned for not more than five years.

Finally, current law requires DOJ to promulgate certain rules relating to information that a person acquiring a handgun through a firearms dealer must provide the dealer. Among other things, the rules must require that the person provide the dealer his or her social security number. The bill eliminates this requirement.

Handgun possession by and handgun transfers involving younger persons

Under current law, no person under 18 years of age may possess a handgun or any other dangerous weapon. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than nine months or both. In addition, no person may intentionally provide a handgun or any other dangerous weapon to a person under 18 years of age. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than five years or both. Both of these prohibitions are subject to certain exceptions relating to the possession of the weapon for target practice or in connection with a course relating to its use; during military service; or for hunting. This bill increases the age at which a person may legally possess a handgun, other than a handgun that the person already legally owns, to 21 years of age. The bill also increases the age at which a person may be legally provided a handgun to 21 years of age. In addition, the bill creates a new exception to these prohibitions to permit law enforcement officers who are under 21 years of age to possess a handgun.

For further information see the ***state and local*** 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.** 29.921 (1) of the statutes is amended to read:

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1 29.921 (1) **GENERALLY.** The department and its wardens may execute and serve
2 warrants and processes issued under any law enumerated in ss. 23.50 (1), 167.31,
3 346.19, 940.24, 941.20, 948.59, 948.60, 948.605 and 948.61 in the same manner as
4 any constable may serve and execute the process; and may arrest, with or without
5 a warrant, any person detected in the actual violation, or whom the officer has
6 probable cause to believe is guilty of a violation of any of the laws cited in this
7 subsection, whether the violation is punishable by criminal penalties or by forfeiture,
8 and may take the person before any court in the county where the offense was
9 committed and make a proper complaint. For the purpose of enforcing any of the
10 laws cited in this subsection, any officer may stop and board any boat and stop any
11 vehicle, if the officer reasonably suspects there is a violation of those sections.

12 **SECTION 2.** 29.931 (2) (a) of the statutes is amended to read:

13 29.931 (2) (a) The department and its wardens shall seize and hold, subject to
14 the order of the court for the county in which the alleged offense was committed, any
15 vehicle, boat or object declared by this chapter to be a public nuisance, or which they
16 have probable cause to believe is being used in violation of this chapter or s. 167.31,
17 287.81, 940.24, 941.20, 948.59, 948.60, 948.605 or 948.61 or is being used in the
18 commission of a crime relating to a submerged cultural resource in violation of s.
19 44.47. If it is proven that the vehicle, boat or object is a public nuisance or that within
20 6 months previous to the seizure the vehicle, boat or object was used in violation of
21 this chapter or s. 167.31, 287.81, 940.24, 941.20, 948.60, 948.605 or 948.61 or was
22 used in the commission of a crime relating to a submerged cultural resource in
23 violation of s. 44.47, it shall be confiscated if the court directs in its order for
24 judgment.

25 **SECTION 3.** 175.33 of the statutes is created to read:

SENATE BILL 492**SECTION 3**

1 **175.33 Transfer of handguns; license required.** (1) In this section:

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

3 (b) "Family member" means a spouse, parent, grandparent, great grandparent,
4 child, grandchild, great grandchild, brother, sister, uncle, aunt, nephew, or niece.
5 The relationship may be by blood, marriage, or adoption.

6 (c) "Firearms dealer" has the meaning given in s. 175.35 (1) (ar).

7 (d) "Handgun" has the meaning given in s. 175.35 (1) (b).

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

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

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

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

15 (d) The seller or transferor is selling or transferring ownership of the handgun
16 to a family member by gift, bequest, or inheritance, the buyer or transferee is at least
17 21 years of age, and the buyer or transferee is not prohibited from possessing a
18 firearm under s. 941.29.

19 **(3)** Any person who intentionally violates sub. (2) shall be fined not less than
20 \$500 nor more than \$10,000 and may be imprisoned for not more than 5 years.

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

22 175.35 (1) (b) "Handgun" means any weapon designed or redesigned, or made
23 or remade, and intended to be fired while held in one hand and to use the energy of
24 an explosive explosion or other form of combustion to expel a projectile through a
25 smooth or rifled bore.

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1 **SECTION 5.** 175.35 (2) (intro.) of the statutes is renumbered 175.35 (2) and
2 amended to read:

3 175.35 (2) When a firearms dealer sells a handgun, he or she may not transfer
4 possession of that handgun to any other person until all of the following have
5 occurred: requirements of sub. (2c) have been met.

6 **SECTION 6.** 175.35 (2) (a) to (d) of the statutes are renumbered 175.35 (2c) (a)
7 to (d).

8 **SECTION 7.** 175.35 (2b) of the statutes is created to read:

9 175.35 (2b) When a person sells a handgun or transfers ownership of a
10 handgun through a firearms dealer, the person may not transfer possession of that
11 handgun to any person other than the firearms dealer, and the firearms dealer may
12 not transfer or authorize the transfer of possession of that handgun to any person,
13 until all of the requirements of sub. (2c) have been met. This subsection does not
14 apply if a person sells a handgun or transfers ownership of a handgun to a firearms
15 dealer.

16 **SECTION 8.** 175.35 (2c) (intro.) of the statutes is created to read:

17 175.35 (2c) All of the following must occur before a sale or transfer occurs under
18 sub. (2) or (2b):

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

20 175.35 (2g) (b) The department of justice shall promulgate rules prescribing
21 a notification form for use under sub. (2) (2c) (b) requiring the transferee to provide
22 his or her name, date of birth, gender, and race ~~and social security number~~ and other
23 identification or information necessary to permit an accurate firearms restrictions
24 record search under par. (c) 3. and the required notification under par. (c) 4. The

SENATE BILL 492**SECTION 9**

1 department of justice shall make the forms available at locations throughout the
2 state.

3 **SECTION 10.** 175.35 (2g) (c) (intro.) of the statutes is amended to read:

4 175.35 **(2g)** (c) (intro.) The department of justice shall promulgate rules for
5 firearms restrictions record searches regarding transferees under ~~sub. subs. (2) and~~
6 (2b), including procedures for all of the following:

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

8 175.35 **(2g)** (c) 4. c. If the search indicates a felony charge without a recorded
9 disposition, the deadline under sub. ~~(2)~~ (2c) (d) is extended to the end of the 3rd
10 complete working day commencing after the day on which the finding is made. The
11 department shall notify the firearms dealer of the extension as soon as practicable.
12 During the extended period, the department shall make every reasonable effort to
13 determine the disposition of the charge and notify the firearms dealer of the results
14 as soon as practicable.

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

16 175.35 **(2i)** The department shall charge a firearms dealer an \$8 fee for each
17 firearms restrictions record search that the firearms dealer requests under sub. ~~(2)~~
18 (2c) (c). The firearms dealer may collect the fee from the transferee or, if the transfer
19 is made under sub. (2b), from the transferor. The department may refuse to conduct
20 firearms restrictions record searches for any firearms dealer who fails to pay any fee
21 under this subsection within 30 days after billing by the department.

22 **SECTION 13.** 175.35 (2j) of the statutes is renumbered 175.35 (2j) (a).

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

24 175.35 **(2j)** (b) If a person sells a handgun or transfers ownership of a handgun
25 through a firearms dealer under sub. (2b), or sells a handgun or transfers ownership

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1 of a handgun to a firearms dealer, the firearms dealer shall provide the person a
2 written receipt documenting the dealer's participation in the sale or transfer.

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

4 175.35 **(2k)** (ar) 2. Check each duplicate notification form received under sub.
5 (2j) (a) against the information recorded by the department regarding the
6 corresponding request for a firearms restrictions record search under sub. (2g). If the
7 department previously provided a unique approval number regarding the request
8 and nothing in the duplicate completed notification form indicates that the
9 transferee is prohibited from possessing a firearm under s. 941.29, the department
10 shall destroy all records regarding that firearms restrictions record search within 30
11 days after receiving the duplicate form.

12 **SECTION 16.** 175.35 (3) of the statutes is renumbered 175.35 (3) (b) and
13 amended to read:

14 175.35 **(3)** (b) Any person who intentionally violates sub. ~~(2)~~, (2e), (2f) or (2j)
15 shall be fined not less than \$500 nor more than \$10,000 and may be imprisoned for
16 not more than 9 months.

17 **SECTION 17.** 175.35 (3) (a) of the statutes is created to read:

18 175.35 **(3)** (a) Any person who intentionally violates sub. (2) or (2b) shall be
19 fined not less than \$500 nor more than \$10,000 and may be imprisoned for not more
20 than 5 years.

21 **SECTION 18.** 938.208 (1) (c) of the statutes is amended to read:

22 938.208 **(1)** (c) Probable cause exists to believe that the juvenile has possessed
23 or gone armed with a short-barreled rifle or a short-barreled shotgun in violation
24 of s. 941.28, or has possessed or gone armed with a handgun in violation of s. ~~948.60~~
25 948.59.

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1 **SECTION 19.** 938.34 (4m) (b) 3. of the statutes is amended to read:

2 938.34 (4m) (b) 3. The juvenile has possessed or gone armed with a
3 short-barreled rifle or a short-barreled shotgun in violation of s. 941.28 or has
4 possessed or gone armed with a handgun in violation of s. ~~948.60~~ 948.59.

5 **SECTION 20.** 938.78 (3) of the statutes is amended to read:

6 938.78 (3) If a juvenile adjudged delinquent under s. 48.12, 1993 stats., or s.
7 938.12 or found to be in need of protection or services under s. 48.13 (12), 1993 stats.,
8 or s. 48.13 (14), 1993 stats., or s. 938.13 (12) or (14) on the basis of a violation of s.
9 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28,
10 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2)
11 (a), 943.23 (1g), (1m) or (1r), 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.055,
12 948.59, 948.60, 948.605 or 948.61 or any crime specified in ch. 940 has escaped from
13 a secured correctional facility, child caring institution, secured group home,
14 inpatient facility, as defined in s. 51.01 (10), secure detention facility or juvenile
15 portion of a county jail, or from the custody of a peace officer or a guard of such a
16 facility, institution or jail, or has been allowed to leave a secured correctional facility,
17 child caring institution, secured group home, inpatient facility, secure detention
18 facility or juvenile portion of a county jail for a specified time period and is absent
19 from the facility, institution, home or jail for more than 12 hours after the expiration
20 of the specified period, the department or county department having supervision
21 over the juvenile may release the juvenile's name and any information about the
22 juvenile that is necessary for the protection of the public or to secure the juvenile's
23 return to the facility, institution, home or jail. The department of corrections shall
24 promulgate rules establishing guidelines for the release of the juvenile's name or
25 information about the juvenile to the public.

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1 **SECTION 21.** 948.59 of the statutes is created to read:

2 **948.59 Possession of a handgun by a person under 21. (1)** In this section:

3 (a) “Handgun” has the meaning given in s. 175.35 (1) (b).

4 (b) “Law enforcement officer” means a Wisconsin law enforcement officer, as
5 defined in s. 175.46 (1) (g), or a federal law enforcement officer, as defined in s. 175.40
6 (7) (a) 1.

7 **(2)** (a) Any person under 21 years of age who possesses or goes armed with a
8 handgun is guilty of a Class A misdemeanor.

9 (b) Except as provided in par. (c), any person who intentionally sells, loans, or
10 gives a handgun to a person under 21 years of age is guilty of a Class E felony.

11 (c) Whoever violates par. (b) is guilty of a Class D felony if the person under 21
12 years of age under par. (b) discharges the handgun and the discharge causes death
13 to himself, herself, or another.

14 (d) A person under 17 years of age who has violated this subsection is subject
15 to the provisions of ch. 938 unless jurisdiction is waived under s. 938.18 or the person
16 is subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

17 **(3)** (a) Subsection (2) (a) does not apply to a person under 21 years of age who
18 possesses or goes armed with a handgun when the handgun is being used in target
19 practice under the supervision of an adult or in a course of instruction in the
20 traditional and proper use of the handgun under the supervision of an adult.
21 Subsection (2) (b) and (c) does not apply to an adult who transfers a handgun to a
22 person under 21 years of age for use only in target practice under the adult’s
23 supervision or in a course of instruction in the traditional and proper use of the
24 handgun under the adult’s supervision.

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1 (b) Subsection (2) (a) does not apply to a person under 21 years of age who is
2 a member of the armed forces or national guard and who possesses or goes armed
3 with a handgun in the line of duty. Subsection (2) (b) and (c) does not apply to a person
4 who is a member of the armed forces or national guard and who transfers a handgun
5 to a person under 21 years of age in the line of duty.

6 (c) Subsection (2) (a) does not apply to a person under 21 years of age who is
7 a law enforcement officer and who possesses or goes armed with a handgun.
8 Subsection (2) (b) and (c) does not apply to a person who transfers a handgun to a
9 person who is under 21 years of age if the latter is a law enforcement officer.

10 (d) Subsection (2) (a) does not apply to a person under 21 years of age who
11 possesses or goes armed with a handgun having a barrel 12 inches in length or longer
12 and who is in compliance with ss. 29.304 and 29.593. Subsection (2) (b) and (c) does
13 not apply to an adult who transfers a handgun having a barrel 12 inches in length
14 or longer to a person under 21 years of age who is in compliance with ss. 29.304 and
15 29.593.

16 (e) Subsection (2) (a) does not apply if, on the effective date of this paragraph
17 [revisor inserts date], the person was at least 18 years of age and owned the
18 handgun.

19 **SECTION 22.** 948.60 (title) of the statutes is amended to read:

20 **948.60** (title) **Possession of ~~a~~ other dangerous weapon weapons by a**
21 **person under 18.**

22 **SECTION 23.** 948.60 (1) of the statutes is amended to read:

23 948.60 (1) In this section, "dangerous weapon" means any loaded or unloaded
24 firearm, loaded or unloaded other than a handgun, as defined in s. 175.35 (1) (b); any
25 electric weapon, as defined in s. 941.295 (4); metallic knuckles or knuckles of any

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1 substance which could be put to the same use with the same or similar effect as
2 metallic knuckles; a nunchaku or any similar weapon consisting of 2 sticks of wood,
3 plastic or metal connected at one end by a length of rope, chain, wire or leather; a
4 cestus or similar material weighted with metal or other substance and worn on the
5 hand; a shuriken or any similar pointed star-like object intended to injure a person
6 when thrown; or a manrikigusari or similar length of chain having weighted ends.

7 **SECTION 24.** 968.255 (1) (a) 2. of the statutes is amended to read:

8 968.255 (1) (a) 2. Arrested for any misdemeanor under s. 167.30, 940.19, 941.20
9 (1), 941.23, 941.237, 941.24, 948.59, 948.60, 948.605 (2) (a) or 948.61.

10 **SECTION 25. Initial applicability.**

11 (1) The treatment of sections 175.33 and 175.35 (1) (b), (2b), (2c) (intro.), (2g)
12 (b) and (c) (intro.) and 4. c., (2i), and (2k) (ar) 2. of the statutes, the renumbering of
13 section 175.35 (2) (a) to (d) and (2j) of the statutes, the renumbering and amendment
14 of section 175.35 (2) (intro.) and (3) of the statutes, and the creation of section 175.35
15 (2j) (b) and (3) (a) of the statutes first apply to sales or transfers of ownership of
16 handguns that occur on the effective date of this subsection.

17 **SECTION 26. Effective date.**

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

20

(END)