



2009 SENATE BILL 377

October 29, 2009 – Introduced by Senators HOLPERIN, TAYLOR, HANSEN, HARSDORF, DARLING, HOPPER, SCHULTZ, SULLIVAN, CARPENTER, WIRCH, KEDZIE, LAZICH, A. LASEE, GROTHMAN, KAPANKE and S. FITZGERALD, cosponsored by Representatives HRAYCHUCK, FRISKE, HUBLER, JORGENSEN, BIES, SUDER, NYGREN, DANOU, MONTGOMERY, KERKMAN, SHERMAN, NERISON, KESTELL, TURNER, RHOADES, RIPP, LEMAHIEU, VOS, CLARK, PRIDEMORE, VRUWINK, MURSAU, MEYER, KAUFERT, ZEPNICK, STRACHOTA, TOWNSEND, VAN ROY, HONADEL, ROTH, SMITH, SPANBAUER, BROOKS, NASS, KNODL, PETROWSKI, KRAMER and BALLWEG. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT** *to renumber and amend* 23.33 (3) (e) and 941.23; and *to create* 23.33
2 (3) (e) 1., 2., 3. and 4., 167.31 (4) (ar), 175.48, 941.23 (1), 941.23 (2) (b), (c), (d)
3 and (e), 941.237 (3) (cr), (L), (m) and (n) and 941.29 (10) (c), (d), (e) and (f) of the
4 statutes; **relating to:** carrying concealed weapons by law enforcement officers
5 and by retired law enforcement officers.

Analysis by the Legislative Reference Bureau

This bill makes certain changes in Wisconsin law to account for a federal law that requires the state to permit an individual who works as, or who has retired from working as, a federal, state, tribal, or local law enforcement officer in Wisconsin or in any other state to carry a concealed firearm under certain circumstances.

Current state and federal law regarding concealed weapons

Wisconsin law specifies that, in general, no person may go armed with a concealed firearm or any other concealed, dangerous weapon. This prohibition, however, does not apply to peace officers, such as local, state, tribal, or federal law enforcement officers. In addition, under *State v. Hamdan*, 2003 WI 113, 264 Wis. 2d 433, 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

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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.

In addition, federal law prohibits the state from barring certain active duty or retired law enforcement officers from carrying concealed firearms. Under federal law, qualified law enforcement officers and qualified retired law enforcement officers who meet certain specified requirements may carry concealed firearms that have been shipped or transported in interstate or foreign commerce, regardless of any prohibition imposed under state law.

Federal law specifies the criteria that a person must meet to be a qualified law enforcement officer or a qualified retired law enforcement officer. To be the former, a person must 1) be employed by a government agency; 2) be a “law enforcement officer,” defined under federal law as a person “authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest”; 3) be authorized by the agency to carry a firearm; 4) not be the subject of any disciplinary action by the agency; 5) not be under the influence of alcohol or another drug; 6) not be prohibited under federal law from possessing a firearm; and 7) meet all standards, if any, established by the agency to qualify the person on a regular basis to use a firearm. For a person to be a qualified retired law enforcement officer, all of the following must apply: 1) the person retired in good standing from service with a government agency as a law enforcement officer, other than for reasons of mental instability; 2) before retirement, the person was regularly employed as a law enforcement officer for an aggregate of 15 years or more or the person retired due to a service-connected disability after completing any applicable probationary period of service; 3) the person has a nonforfeitable right to benefits under the agency’s retirement plan; 4) the person is not under the influence of alcohol or another drug; 5) the person is not prohibited under federal law from possessing a firearm; and 6) during the most recent 12-month period, the person has met the state’s standards for training and qualification for active duty law enforcement officers to carry firearms. Wisconsin law does not currently set or impose any standards for ongoing training and qualification for active duty law enforcement officers to remain eligible to carry firearms.

Under federal law, if a person is a qualified law enforcement officer, the prohibition contained in Wisconsin law regarding going armed with a concealed and dangerous weapon does not apply to his or her going armed with a concealed firearm if the person carries a photo ID issued by the agency for which he or she works. If the person is a qualified retired law enforcement officer, the prohibition does not apply to his or her going armed with a concealed firearm if the person carries either: 1) a photo ID issued by the agency from which the person retired as a law enforcement officer that indicates that, within the preceding 12 months, the agency has tested the person or otherwise found that he or she meets its standards for training and qualification for active duty law enforcement officers to carry the type of firearm that the qualified retired law enforcement officer is carrying concealed; or 2) both of the following: a) a photo ID issued by the agency from which the person

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retired as a law enforcement officer; and b) a certification issued by the state in which the person resides that indicates that, within the preceding 12 months, the state has tested the person or otherwise found that he or she meets its standards for training and qualification for active duty law enforcement officers to carry the type of firearm that the qualified retired law enforcement officer is carrying concealed. Federal law, however, specifies that the exemption for qualified law enforcement officers and qualified retired law enforcement officers does not apply if the firearm involved is a machine gun, has a silencer attached to it, or is a destructive device (such as a bomb). Federal law also specifies that a state may 1) permit private persons or entities to bar the possession of concealed firearms on their own property; and 2) prohibit or restrict the possession of firearms on any state or local government property, installation, base, building, or park.

The bill regarding concealed weapons

This bill codifies in the state concealed weapons statute the provisions of federal law that make the statute inapplicable to active duty and retired law enforcement officers under the circumstances specified in federal law as described above. To implement federal law, the bill also makes certain other state law prohibitions regarding the carrying of firearms inapplicable to an active duty or retired law enforcement officer if he or she is carrying a concealed firearm under those same circumstances. These include the prohibition on going armed with a handgun in a tavern, the prohibition regarding the possession, transportation, or loading of a handgun in vehicles, motorboats, and aircraft, and the prohibition on possessing a firearm that may arise in certain domestic abuse cases. (Depending on the facts, however, a person who is subject to such an injunction may, as a result of that case, also be prohibited under federal law from possessing a firearm, which means that the federal law regarding the carrying of a concealed firearm would not apply.)

The bill also permits the Department of Justice (DOJ) and other state and local law enforcement agencies in Wisconsin to enable retired law enforcement officers to carry concealed firearms in the manner provided under federal law. These agencies may issue and renew certification cards. If these agencies issue and renew certification cards, the cards must include personal information about the certification card holder such as the person's name, address, date of birth, a description of the person, and a photograph. The cards must also include the type of firearm the person is certified to carry (which cannot be a machine gun or a destructive device such as a bomb), a statement that the retired officer has met certain standards for training and qualification, and an expiration date of 12 months after the certification card is issued or renewed.

The requirement to issue or renew a certification card to a retired officer applies only if the retired officer satisfies the following criteria: 1) the officer retired from service in law enforcement in good standing for reasons other than mental instability; 2) the retired officer was employed as a law enforcement officer for an aggregate of at least 15 years or retired from law enforcement due to a service-connected disability after completing any probationary period; 3) the retired officer has a nonforfeitable right to benefits under the law enforcement agency's retired plan; and 4) federal law does not prohibit the retired officer from possessing

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a firearm. For a law enforcement officer who was employed in Wisconsin, the law enforcement agency that employed the officer will verify the criteria before issuing or renewing the certification card. For a retired federal law enforcement officer who was employed by a law enforcement agency that is not in Wisconsin but who now resides in Wisconsin, DOJ will verify the criteria before issuing or renewing the certification card.

If a retired officer is carrying his or her valid certification card, he or she is exempt from the prohibitions against carrying a concealed weapon described above only if the following apply: 1) the retired officer is not carrying a firearm that is not designated on the card or identification, if the card or identification includes such a designation, and the firearm is not a machine gun or a destructive device and does not have a firearm silencer attached; 2) the retired officer is not under the influence of an intoxicant; and 3) federal law does not prohibit the retired officer from possessing a firearm.

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

3 23.33 **(3)** (e) (intro.) With any firearm in his or her possession unless it is
4 unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed
5 in a carrying case. The prohibition against a firearm does not apply to any of the
6 following:

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

8 23.33 **(3)** (e) 1. A law enforcement officer, as defined in s. 175.48 (1) (c), to whom
9 s. 941.23 (2) (b) applies.

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

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

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

6 **SECTION 3.** 167.31 (4) (ar) of the statutes is created to read:

7 167.31 (4) (ar) Subsections (2) (a) and (b) and (3) (a) and (b) do not apply to the
8 placement, possession, or transportation of a firearm by any of the following:

9 1. A law enforcement officer, as defined in s. 175.48 (1) (c), to whom s. 941.23
10 (2) (b) applies.

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

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

17 4. A retired nonresident law enforcement officer, as defined in s. 941.23 (1) (h),
18 to whom s. 941.23 (2) (e) applies.

19 **SECTION 4.** 175.48 of the statutes is created to read:

20 **175.48 Carrying of concealed weapons by retired law enforcement**
21 **officers. (1) DEFINITIONS.** In this section:

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

23 (b) "Law enforcement agency" means an agency that consists of one or more
24 persons employed by the federal government, a state, or a political subdivision of a
25 state, the U.S. armed forces, or the national guard that has as its purposes the

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1 prevention and detection of crime and the enforcement of laws or ordinances, and
2 that is authorized to make arrests for crimes.

3 (c) “Law enforcement officer” means a person who is employed by a law
4 enforcement agency for the purpose of engaging in, or supervising others engaging
5 in, the prevention, detection, investigation, or prosecution of, or the incarceration of
6 any person for, any violation of law and who has statutory powers of arrest.

7 (d) “Retired federal officer” means a retired law enforcement officer who was
8 a law enforcement officer employed by a federal law enforcement agency and who
9 resides in Wisconsin.

10 (e) “Retired officer” means a law enforcement officer who retired from a state
11 or local law enforcement agency in Wisconsin.

12 **(2) CERTIFICATION OF RETIRED OFFICERS.** (a) Upon the request of a retired officer,
13 a law enforcement agency that employed the retired officer may, prior to his or her
14 retirement, except as provided in par. (b), issue the retired officer a certification card
15 as described in sub. (4) stating all of the following:

16 1. The type of firearm the retired officer is certified to carry, but no retired
17 officer may be certified to carry a prohibited firearm, as defined in s. 941.23 (1) (f).

18 2. The retired officer has met either the state’s standards for training and
19 qualification for law enforcement officers to carry firearms, or, if no state standards
20 exist, the law enforcement agency’s standards for training and qualification for law
21 enforcement officers to carry a firearm of the type under subd. 1.

22 3. The date on which the finding under subd. 2. was made and an expiration
23 date that is 12 months later than that date.

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

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1 (b) The law enforcement agency may not issue the retired officer a certification
2 card under par. (a) unless the law enforcement agency first verifies all of the
3 following:

4 1. At the time he or she retired from the law enforcement agency, the retired
5 officer was employed as a law enforcement officer.

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

8 3. The retired officer was regularly employed as a law enforcement officer for
9 at least the number of years of service specified in 18 USC 926C (c) (3) (A) or the
10 retired officer retired from law enforcement service due to a service-connected
11 disability, as determined by the retired officer's employer, after completing any
12 applicable probationary period.

13 4. The retired officer has a nonforfeitable right to benefits under the retirement
14 plan of the law enforcement agency from which he or she retired.

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

18 6. The retired officer has, during the previous 12 months, met, at his or her own
19 expense, either the state's standards for training and qualification for law
20 enforcement officers to carry firearms or, if no state standards exist, the law
21 enforcement agency's standards for training and qualification for law enforcement
22 officers to carry the firearm of the type under par. (a) 1.

23 **(3) CERTIFICATION OF RETIRED FEDERAL OFFICERS.** (a) Upon the request of a retired
24 federal officer, the department may, except as provided in par. (b), issue the retired
25 federal officer a certification card as described in sub. (4) stating all of the following:

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1 1. The type of firearm the retired federal officer is certified to carry, but no
2 retired federal officer may be certified to carry a prohibited firearm, as defined in s.
3 941.23 (1) (f).

4 2. The retired federal officer has met either the state’s standards for training
5 and qualification for law enforcement officers to carry firearms or, if no state
6 standards exist, the standards of the department’s division of criminal investigation
7 for training and qualification for law enforcement officers to carry a firearm of the
8 type under subd. 1.

9 3. The date on which the finding under subd. 2. was made and an expiration
10 date that is 12 months later than that date.

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

13 (b) The department may not issue the retired federal officer a certification card
14 under par. (a) unless the department first verifies all of the following:

15 1. At the time he or she retired from the federal law enforcement agency, the
16 retired federal officer was employed as a law enforcement officer.

17 2. The retired federal officer retired in good standing from service as a law
18 enforcement officer for reasons other than mental instability.

19 3. The retired federal officer was regularly employed as a law enforcement
20 officer for at least the number of years specified in 18 USC 926C (c) (3) (A) or the
21 retired federal officer retired from law enforcement service due to a
22 service-connected disability, as determined by the retired federal officer’s employer,
23 after completing any applicable probationary period.

24 4. The retired federal officer has a nonforfeitable right to benefits under the
25 retirement plan of the law enforcement agency from which he or she retired.

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1 5. The retired federal officer is not prohibited under federal law from
2 possessing a firearm as indicated by a search of the transaction information for
3 management of enforcement system and the national crime information center
4 system.

5 6. The retired federal officer has, during the previous 12 months, met, at his
6 or her own expense, either the state's standards for training and qualification for law
7 enforcement officers to carry firearms or, if no state standards exist, the standards
8 of the department's division of criminal investigation for training and qualification
9 for law enforcement officers to carry the firearm of the type under par. (a) 1.

10 **(4) CERTIFICATION CARDS.** (a) 1. Subject to pars. (b), (c), and (d) and sub. (3) (a),
11 the department shall design a certification card to be issued by the department under
12 sub. (3) (a).

13 2. Subject to pars. (b), (c), and (d) and sub. (2) (a), upon a request under sub.
14 (2), each law enforcement agency shall design a certification card to be issued by the
15 law enforcement agency under sub. (2) (a).

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

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

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

21 3. The name of this state.

22 (c) A certification card shall include a statement that the certification card does
23 not confer any law enforcement authority on the certification card holder and does
24 not make the certification card holder an employee or agent of the certifying agency
25 or department.

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

3 (5) RENEWAL OF CERTIFICATION CARDS. A person who holds a current certification
4 card issued under sub. (2) or (3) may renew the certification card by requesting the
5 department or the law enforcement agency, whichever issued the current
6 certification card, to renew the certification card, if, before the date the certification
7 card expires, the law enforcement agency verifies sub. (2) (b) 5. and 6., if the
8 certification card holder is a retired officer, or the department verifies sub. (3) (b) 5.
9 and 6., if the certification card holder is a retired federal officer, and the certification
10 card holder provides any information necessary for the verification. The renewal
11 shall state the date on which verification was made and an expiration date that is
12 12 months later than that date.

13 (6) IMMUNITY. (a) When acting in good faith under this section, the department
14 and its employees and a law enforcement agency and its employees are immune from
15 civil and criminal liability arising from any act or omission under this section.

16 (b) When acting in good faith under this section, an entity providing firearms
17 training to comply with the requirements under sub. (2) (a) 2., (3) (a) 2., or (5) and
18 its employees are immune from civil and criminal liability arising from any act or
19 omission that is related to that training.

20 **SECTION 5.** 941.23 of the statutes is renumbered 941.23 (2) (intro.) and
21 amended to read:

22 941.23 (2) (intro.) Any person ~~except a peace officer~~ other than one of the
23 following who goes armed with a concealed and dangerous weapon is guilty of a Class
24 A misdemeanor. ~~Notwithstanding:~~

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1 (a) A peace officer, but notwithstanding s. 939.22 (22), for purposes of this
2 section paragraph, “peace officer” does not include a commission warden who is not
3 a state-certified commission warden.

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

5 941.23 (1) In this section:

6 (a) “Firearm silencer” has the meaning given in s. 941.298 (1).

7 (c) “Law enforcement agency” has the meaning given in s. 175.48 (1) (b).

8 (e) “Law enforcement officer” has the meaning given in s. 175.48 (1) (c).

9 (f) “Prohibited firearm” means any item under 18 USC 926B (e) or 18 USC 926C

10 (e).

11 (g) “Retired federal officer” has the meaning given in s. 175.48 (1) (d).

12 (h) “Retired nonresident law enforcement officer” means a person who, before
13 retiring, was employed as a law enforcement officer with a law enforcement agency
14 and who does not reside in Wisconsin.

15 (i) “Retired officer” has the meaning given in s. 175.48 (1) (e).

16 **SECTION 7.** 941.23 (2) (b), (c), (d) and (e) of the statutes are created to read:

17 941.23 (2) (b) A law enforcement officer who is carrying a firearm and who is
18 employed by a law enforcement agency if all of the following apply:

19 1. The law enforcement agency that employs him or her has authorized him or
20 her to carry a firearm.

21 2. He or she is carrying the photographic identification issued by the law
22 enforcement agency that employs him or her.

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

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

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

4 6. The firearm is not a prohibited firearm.

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

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

7 1. He or she is carrying a current certification card issued under s. 175.48 (2)

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

9 2. The weapon is a firearm and is a type that is listed on the current certification
10 card.

11 3. A firearm silencer is not attached to the firearm.

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

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

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

15 1. He or she is carrying a current certification card issued under s. 175.48 (3)

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

17 2. The weapon is a firearm and is a type that is listed on the current certification
18 card.

19 3. A firearm silencer is not attached to the firearm.

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

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

22 (e) A retired nonresident law enforcement officer if all of the following apply:

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

24 a. A photographic identification issued by the law enforcement agency from
25 which he or she retired from service as a law enforcement officer that indicates that

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1 he or she has, not more than one year before the date he or she is carrying the firearm,
2 been found by the law enforcement agency to meet any standards established by the
3 law enforcement agency for training and qualification for active law enforcement
4 officers to carry a firearm of the same type that he or she is carrying.

5 b. A photographic identification issued by the law enforcement agency from
6 which he or she retired from service as a law enforcement officer and a certification
7 issued by the state in which he or she resides that indicates that he or she has, not
8 more than one year before the date he or she is carrying the firearm, been found by
9 the state to meet the standards established by the state for training and qualification
10 for active law enforcement officers to carry a firearm of the same type that he or she
11 is carrying.

12 2. The weapon is a firearm but is not a prohibited firearm.

13 3. A firearm silencer is not attached to the weapon.

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

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

16 **SECTION 8.** 941.237 (3) (cr), (L), (m) and (n) of the statutes are created to read:

17 941.237 (3) (cr) A law enforcement officer, as defined in s. 175.48 (1) (c), to
18 whom s. 941.23 (2) (b) applies.

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

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

