



1995 ASSEMBLY BILL 294

April 4, 1995 - Introduced by Representatives TRAVIS, NOTESTEIN, URBAN, HARS DORF, BALDWIN, RYBA, KAUFERT, OWENS, KRUG, PLACHE, F. LASEE, BLACK, R. YOUNG, ROBSON, BELL, RILEY, BOCK, PLOMBON and MURAT, cosponsored by Senators ROSENZWEIG, WINEKE, BURKE and CHVALA. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT** *to repeal* 175.35 (1) (bg); *to amend* 48.396 (8), 175.35 (2) (c), 175.35 (2)
2 (d), 175.35 (2f), 175.35 (2g) (b), 175.35 (2g) (c) (intro.), 175.35 (2g) (c) 3., 175.35
3 (2g) (c) 4., 175.35 (2i), 175.35 (2j), 175.35 (2k) (a) 2., 175.35 (2k) (b) 2. a., 175.35
4 (2L) and 813.12 (9) (a) 3.; and *to create* 175.35 (1) (at), 813.12 (4m), 813.12 (6)
5 (am), 813.122 (5m), 813.122 (9) (am), 813.125 (4m), 813.125 (5r) and 941.293 of
6 the statutes; **relating to:** the sale of handguns to persons who are subject to
7 certain restraining orders or injunctions and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person may not possess a firearm if he or she has been convicted of a felony, found not guilty of or not responsible for a felony by reason of mental disease or defect or has been adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult. A person who is involuntarily committed for treatment in a civil commitment proceeding may also be prohibited from possessing a firearm. In addition, under current law the department of justice (DOJ) is responsible for conducting a criminal history record search to determine whether a prospective purchaser of a handgun is prohibited from possessing a firearm. Current law also authorizes a circuit court to issue a temporary restraining order or injunction against a person who engages in domestic abuse (abuse of an adult member of the family or household), abuse of a child or harassment of another person.

This bill prohibits a person who is the subject of a domestic abuse, child abuse or harassment temporary restraining order or injunction from purchasing a handgun while such temporary restraining order or injunction is in effect. The bill requires the clerk of the circuit court that issues the temporary restraining order or

injunction to notify DOJ of the temporary restraining order or injunction. The clerk of court must also provide DOJ with information concerning the time period during which the temporary restraining order or injunction is in effect, as well as with information concerning the person against whom the temporary restraining order or injunction is issued so that DOJ may conduct a record search to determine whether a prospective purchaser of a handgun is the subject of a temporary restraining order or injunction.

A person who violates the bill's prohibition on purchasing a handgun may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

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.** 48.396 (8) of the statutes is amended to read:

2 48.396 (8) Notwithstanding sub. (2), if a child is adjudged delinquent for an act
3 that would be a felony if committed by an adult, the court clerk shall notify the
4 department of justice of that fact. No other information from the child's court records
5 may be disclosed to the department of justice except by order of the court. The
6 department of justice may disclose any information provided under this subsection
7 only as part of a ~~criminal history~~ firearms restrictions record search under s. 175.35
8 (2g) (c).

9 **SECTION 2.** 175.35 (1) (at) of the statutes is created to read:

10 175.35 (1) (at) "Firearms restrictions record search" means a search of
11 department of justice records to determine whether a person seeking to purchase a
12 handgun is prohibited from possessing a firearm under s. 941.29 or prohibited from
13 purchasing a handgun under s. 941.293. "Firearms restriction record search"
14 includes a criminal history record search, a search to determine whether a person is
15 prohibited from possessing a firearm under s. 51.20 (13) (cv) and a search to
16 determine whether the person is subject to a temporary restraining order or

1 injunction under s. 813.12, 813.122 or 813.125 or a tribal order or injunction filed
2 with the circuit court under s. 813.12 (9) (a).

3 **SECTION 3.** 175.35 (1) (bg) of the statutes is repealed.

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

5 175.35 (2) (c) The firearms dealer has conveyed the information from the
6 completed notification form to the department of justice as required by rule under
7 sub. (2g) (b) and requested a ~~criminal history record search and involuntary~~
8 ~~commitment~~ firearms restrictions record search.

9 **SECTION 5.** 175.35 (2) (d) of the statutes is amended to read:

10 175.35 (2) (d) Forty-eight hours, subject to extension under sub. (2g) (c) 4. c.,
11 have elapsed from the time that the firearms dealer has received a confirmation
12 number regarding the ~~criminal history record search and involuntary commitment~~
13 firearms restrictions record search under sub. (2g) (c) from the department of justice
14 and the firearms dealer has not been notified that the transfer would be in violation
15 of s. 941.29 ~~or 941.293~~.

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

17 175.35 (2f) When a firearms dealer requests that the department of justice
18 provide a ~~criminal history record search and involuntary commitment~~ firearms
19 restrictions record search under sub. (2g), he or she shall provide truthful
20 information about his or her status as a firearms dealer and shall provide an accurate
21 firearms dealer identification number obtained under sub. (2h). A person may
22 request that the department provide a ~~criminal history record search and~~
23 ~~involuntary commitment~~ firearms restrictions record search under sub. (2g) only if
24 he or she is a firearms dealer.

25 **SECTION 7.** 175.35 (2g) (b) of the statutes is amended to read:

1 175.35 (2g) (b) The department of justice shall promulgate rules prescribing
2 a notification form for use under sub. (2) requiring the transferee to provide his or
3 her name, date of birth, gender, race and social security number and other
4 identification necessary to permit an accurate ~~criminal history record search and~~
5 ~~involuntary commitment~~ firearms restrictions record search under par. (c) 3. and the
6 required notification under par. (c) 4. The department of justice shall make the forms
7 available at locations throughout the state.

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

9 175.35 (2g) (c) (intro.) The department of justice shall promulgate rules for
10 ~~criminal history record searches and involuntary commitment~~ firearms restrictions
11 record searches regarding transferees under sub. (2), including procedures for all of
12 the following:

13 **SECTION 9.** 175.35 (2g) (c) 3. of the statutes is amended to read:

14 175.35 (2g) (c) 3. The department to conduct the ~~criminal history record search~~
15 ~~and involuntary commitment~~ firearms restrictions record search regarding the
16 transferee. The rules shall include, but not be limited to, a requirement that the
17 department use the transaction information for management of enforcement system
18 and the national crime information center system.

19 **SECTION 10.** 175.35 (2g) (c) 4. of the statutes is amended to read:

20 175.35 (2g) (c) 4. The department to notify the dealer, either during the initial
21 telephone call or as soon thereafter as practicable, of the results of the ~~criminal~~
22 ~~history record search and involuntary commitment~~ firearms restrictions record
23 search as follows:

24 a. If the ~~searches indicate~~ search indicates that the transferee is prohibited
25 from possessing a firearm under s. 941.29 or prohibited from purchasing a handgun

1 under s. 941.293, the department shall provide the firearms dealer with a unique
2 nonapproval number. The department may not disclose to the firearms dealer the
3 reason the transferee is prohibited from possessing a firearm under s. 941.29 or
4 prohibited from purchasing a handgun under s. 941.293.

5 b. If the ~~searches indicate~~ search indicates that the transferee is not prohibited
6 from possessing a firearm under s. 941.29 and not prohibited from purchasing a
7 handgun under s. 941.293, the department shall provide the firearms dealer with a
8 unique approval number.

9 c. If the ~~criminal history record~~ search indicates a felony charge without a
10 recorded disposition, the deadline under sub. (2) (d) is extended to the end of the 3rd
11 complete working day commencing after the day on which the finding is made. The
12 department shall notify the firearms dealer of the extension as soon as practicable.

13 During the extended period, the department shall make every reasonable effort to
14 determine the disposition of the charge and notify the firearms dealer of the results
15 as soon as practicable.

16 **SECTION 11.** 175.35 (2i) of the statutes is amended to read:

17 175.35 (2i) The department shall charge a firearms dealer an \$8 fee for each
18 ~~combined criminal history record search and involuntary commitment~~ firearms
19 restrictions record search that the firearms dealer requests under sub. (2) (c). The
20 firearms dealer may collect the fee from the transferee. The department may refuse
21 to conduct ~~criminal history record searches and involuntary commitment~~ firearms
22 restrictions record searches for any firearms dealer who fails to pay any fee under
23 this subsection within 30 days after billing by the department.

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

1 175.35 (2j) A firearms dealer shall maintain the original record of all completed
2 notification forms and a record of all confirmation numbers and corresponding
3 approval or nonapproval numbers that he or she receives regarding ~~eriminal history~~
4 ~~record searches and involuntary commitment~~ firearms restrictions record searches
5 under sub. (2g). The firearms dealer shall mail the duplicate copy of each completed
6 notification form to the department of justice.

7 **SECTION 13.** 175.35 (2k) (a) 2. of the statutes is amended to read:

8 175.35 (2k) (a) 2. Check each duplicate notification form received under sub.
9 (2j) against the information recorded by the department regarding the corresponding
10 request for a ~~eriminal history record search and involuntary commitment~~ firearms
11 restrictions record search under sub. (2g). If the department previously provided a
12 unique approval number regarding the request and nothing in the duplicate
13 completed notification form indicates that the transferee is prohibited from
14 possessing a firearm under s. 941.29 or prohibited from purchasing a handgun under
15 s. 941.293, the department shall destroy all records regarding that ~~eriminal history~~
16 ~~record search and involuntary commitment~~ firearms restrictions record search
17 within 30 days after receiving the duplicate form.

18 **SECTION 14.** 175.35 (2k) (b) 2. a. of the statutes is amended to read:

19 175.35 (2k) (b) 2. a. Except as provided in subd. 2. b., a log of dates of requests
20 for ~~eriminal history record searches and involuntary commitment~~ firearms
21 restrictions record searches under sub. (2g) together with confirmation numbers,
22 unique approval and nonapproval numbers and firearms dealer identification
23 numbers corresponding to those dates.

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

1 175.35 **(2L)** The department of justice shall promulgate rules providing for the
2 review of nonapprovals under sub. (2g) (c) 4. a. Any person who is denied the right
3 to purchase a handgun because the firearms dealer received a nonapproval number
4 under sub. (2g) (c) 4. a. may request a ~~criminal history record search and involuntary~~
5 ~~commitment~~ firearms restrictions record search review under those rules. If the
6 person disagrees with the results of that review, the person may file an appeal under
7 rules promulgated by the department.

8 **SECTION 16.** 813.12 (4m) of the statutes is created to read:

9 813.12 **(4m)** NOTICE OF RESTRICTION ON HANDGUN PURCHASE. A temporary
10 restraining order issued under sub. (3) and an injunction issued under sub. (4) shall
11 inform the respondent named in the petition of the requirements and penalties
12 under s. 941.293.

13 **SECTION 17.** 813.12 (6) (am) of the statutes is created to read:

14 813.12 **(6)** (am) If a temporary restraining order is issued under sub. (3), if an
15 injunction is issued or extended under sub. (4) or if a tribal order or injunction is filed
16 under sub. (9) (a), the clerk of the circuit court shall notify the department of justice
17 of the order or injunction and shall provide the department of justice with
18 information concerning the period during which the order or injunction is in effect
19 and information necessary to identify the respondent for purposes of a restraining
20 order and injunction record search under s. 175.35 (2g) (c).

21 **SECTION 18.** 813.12 (9) (a) 3. of the statutes is amended to read:

22 813.12 **(9)** (a) 3. The tribal order or injunction includes notice to the respondent
23 that the tribal order or injunction is being filed in the circuit court ~~and~~, that a
24 violation of the tribal order or injunction may result in arrest and imposition of

1 criminal penalties under sub. (8) (a) and that the respondent is subject to the
2 requirements and penalties under s. 941.293.

3 **SECTION 19.** 813.122 (5m) of the statutes is created to read:

4 813.122 **(5m)** NOTICE OF RESTRICTION ON HANDGUN PURCHASE. A temporary
5 restraining order issued under sub. (4) and an injunction issued under sub. (5) shall
6 inform the respondent named in the petition of the requirements and penalties
7 under s. 941.293.

8 **SECTION 20.** 813.122 (9) (am) of the statutes is created to read:

9 813.122 **(9)** (am) If a temporary restraining order is issued under sub. (4) or an
10 injunction is issued or extended under sub. (5), the clerk of the circuit court shall
11 notify the department of justice of the order or injunction and shall provide the
12 department of justice with information concerning the period during which the order
13 or injunction is in effect and information necessary to identify the respondent for
14 purposes of a restraining order and injunction record search under s. 175.35 (2g) (c).

15 **SECTION 21.** 813.125 (4m) of the statutes is created to read:

16 813.125 **(4m)** NOTICE OF RESTRICTION ON HANDGUN PURCHASE. A temporary
17 restraining order issued under sub. (3) and an injunction issued under sub. (4) shall
18 inform the respondent named in the petition of the requirements and penalties
19 under s. 941.293.

20 **SECTION 22.** 813.125 (5r) of the statutes is created to read:

21 813.125 **(5r)** NOTICE TO DEPARTMENT OF JUSTICE. If a temporary restraining
22 order is issued under sub. (3) or if an injunction is issued under sub. (4), the clerk of
23 the circuit court shall notify the department of justice of the order or injunction and
24 shall provide the department of justice with information concerning the period
25 during which the order or injunction is in effect and information necessary to identify

1 the respondent for purposes of a restraining order and injunction record search
2 under s. 175.35 (2g) (c).

3 **SECTION 23.** 941.293 of the statutes is created to read:

4 **941.293 Restriction on purchase of handgun.** (1) In this section,
5 “handgun” has the meaning given in s. 175.35 (1) (b).

6 (2) Any person against whom a temporary restraining order or injunction has
7 been issued under s. 813.12, 813.122 or 813.125 or against whom an order or
8 injunction has been filed under s. 813.12 (9) (a) and who, during the period the
9 temporary restraining order or injunction is in effect, purchases a handgun is guilty
10 of a Class A misdemeanor.

11 (3) Any handgun involved in an offense under sub. (2) is subject to s. 968.20
12 (3).

13 (4) A person is concerned with the commission of a crime, as specified in s.
14 939.05 (2) (b), in violation of this section if he or she knowingly furnishes a person
15 with a handgun in violation of sub. (2).

16 **SECTION 24. Initial applicability.**

17 (1) This act first applies to persons who are subject to a temporary restraining
18 order or an injunction issued under section 813.12, 813.122 or 813.125 of the statutes
19 or filed under section 813.12 (9) (a) of the statutes on the effective date of this
20 subsection.

21 (END)