

1999 DRAFTING REQUEST

Bill

Received: **02/22/99**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Peter Bock (608) 266-8580**

By/Representing: **David Austin**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - guns and weapons**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Transfer of firearms

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	olsenje 02/22/99	gilfokm 03/1/99 chanaman 03/1/99		_____			
/1			martykr 03/2/99	_____	lrb_docadmin 03/2/99	lrb_docadmin 03/23/99	

FE Sent For:

<END>

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1/?	olsenje	cmh 3/1 9/1	Jm/e 3	Jf 3 Jm 2			

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<END>

Please redraft for the current session. The penalty, as written, is fine.



David Austin

STATE REPRESENTATIVE
Peter Bock
Democratic Caucus Chair

2296

- For your information
- In response to your request
- Please comment after you have reviewed these materials

Office: P.O. Box 8952 • Madison, WI 53708 • (608) 266-8580
Toll-free 1-888-529-0007 • Fax: (608) 282-3607 • E-Mail: Rep.Bock@legis.state.wi.us

 Recycled paper

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3766/1dn

JEO:mfd:km

Wednesday, August 20, 1997

Representative Bock:

This draft is based on S. 428, which was introduced in the U.S. Senate by Senator Herb Kohl.

The draft creates a definition of "locking device" that is based on the definition in S. 428. Also, the draft amends the warning already required under s. 175.37 (1), stats., to include language from S. 428 that is not currently required under s. 175.37, stats. In addition, like S. 428, this draft provides exemptions from the locking device and warning requirements for transfers to other firearms dealers, law officers and government agencies.

Finally, note that this draft uses the existing penalty in s. 175.37 (2), stats. While S. 428 provides only a civil penalty of up to \$10,000, it seemed inconsistent to me to keep the current criminal penalty under s. 175.37 (2), stats., for failure to give the required warning but create only a civil penalty for actually failing to provide a locking device. Does the penalty in s. 175.37 (2), stats., effect your intent, or do you want to provide for a different penalty?

Jefren E. Olsen
Legislative Attorney
266-8906



1997 BILL

1 **AN ACT to renumber and amend 175.37 (1); to amend 175.37 (title) and 175.37**
2 **(2); and to create 175.37 (1d), 175.37 (1m) and 175.37 (1x) of the statutes;**
3 **relating to: the transfer of firearms and providing a penalty.**

Analysis by the Legislative Reference Bureau

Current law provides that various 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. Current law also requires that upon the retail sale or transfer of any firearm, the person who is selling or transferring the firearm must provide a warning to the person buying or receiving the firearm about the possible criminal penalties that may be imposed if a person leaves a loaded firearm within the reach or easy access of a child. Any person who fails to provide this warning when selling or transferring a firearm may be fined not more than \$500 or imprisoned for not more than 30 days or both.

This bill prohibits a federally licensed firearms dealer from transferring a handgun to another person without also providing the person taking possession of the handgun with a locking device for the handgun, unless the person taking possession of the handgun is another firearms dealer, a governmental department or agency or a law enforcement officer who will be using the handgun for law enforcement purposes. The bill defines "locking device" as a device that is installed on or incorporated into the design of a firearm, that is secured by a means of a key or combination lock and that prevents discharge of the firearm unless it is removed, unlocked or deactivated. A person who violates the prohibition on transferring a handgun without a locking device may be fined not more than \$500 or imprisoned for not more than 30 days or both.

The bill also expands the language that must be included in the warning required under current law when a firearm is sold or transferred. Under the bill, the warning must also state that the use of a locking device is only one aspect of responsible firearm storage, that firearms should be stored unloaded and locked in

a place that is inaccessible to children and separate from ammunition for the firearm and that failure to properly lock and store a firearm may result in civil liability. The bill also provides that the warning does not have to be provided if the firearm is being sold or transferred to another firearms dealer, a governmental department or agency or a law enforcement officer who will be using the handgun for law enforcement purposes.

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

1 **SECTION 1.** 175.37 (title) of the statutes is amended to read:

2 **175.37 (title) ~~Warning whenever~~ Locking device required when**
3 **transferring a handgun; warning required when transferring a firearm.**

4 **SECTION 2.** 175.37 (1) of the statutes is renumbered 175.37 (1s) and amended
5 to read:

6 **175.37 (1s) (title) WARNING UPON TRANSFER OF FIREARM. Upon Except as**
7 **provided in sub. (1x), upon the retail commercial sale or retail commercial transfer**
8 **of any firearm, the seller or transferor shall provide to the buyer or transferee the**
9 **following written warning in block letters not less than one-fourth inch in height:**
10 **“THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT**
11 **OF RESPONSIBLE FIREARM STORAGE. FIREARMS SHOULD BE STORED**
12 **UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM**
13 **THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN. FAILURE TO**
14 **PROPERLY LOCK AND STORE YOUR FIREARM MAY RESULT IN CIVIL**
15 **LIABILITY, AND IF YOU LEAVE A LOADED FIREARM WITHIN THE REACH OR**
16 **EASY ACCESS OF A CHILD YOU MAY BE FINED OR IMPRISONED OR BOTH**
17 **IF THE CHILD IMPROPERLY DISCHARGES, POSSESSES OR EXHIBITS THE**
18 **FIREARM.”**

19 **SECTION 3.** 175.37 (1d) of the statutes is created to read:

1 **175.37 (1d) DEFINITIONS.** In this section:

2 (a) “Firearms dealer” has the meaning given in s. 175.35 (1) (ar).

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

4 (c) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

5 (d) “Locking device” means a device that is installed on or incorporated into the
6 design of a firearm, that is secured by a key or combination lock and that prevents
7 discharge of the firearm unless it is removed, unlocked or deactivated.

8 **SECTION 4.** 175.37 (1m) of the statutes is created to read:

9 **175.37 (1m) LOCKING DEVICE REQUIRED FOR CERTAIN SALES OR TRANSFERS OF**
10 **HANDGUNS.** (a) Except as provided in sub. (1x), when a firearms dealer sells or
11 transfers any handgun, the firearms dealer may not transfer possession of the
12 handgun to another person unless the firearms dealer provides the person taking
13 possession of the handgun with a locking device for that handgun.

14 (b) Paragraph (a) does not prohibit a firearms dealer from charging the person
15 who is buying a handgun or the person to whom a handgun is being transferred for
16 the locking device in addition to the purchase price charged for the handgun.

17 **SECTION 5.** 175.37 (1x) of the statutes is created to read:

18 **175.37 (1x) EXCEPTIONS.** Subsections (1m) (a) and (1s) do not apply if the person
19 taking possession of the firearm is any of the following:

20 (a) Another firearms dealer.

21 (b) A law enforcement officer who will be using the firearm for law enforcement
22 purposes.

23 (c) A department or agency of the United States, this state or a political
24 subdivision of this state.

25 **SECTION 6.** 175.37 (2) of the statutes is amended to read:

cmv
2306/1

9

1997 BILL

revised

1 AN ACT *to renumber and amend* 175.37 (1); *to amend* 175.37 (title) and 175.37
2 (2); and *to create* 175.37 (1d), 175.37 (1m) and 175.37 (1x) of the statutes;
3 **relating to:** the transfer of firearms and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law provides that various 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. Current law also requires that upon the retail sale or transfer of any firearm, the person who is selling or transferring the firearm must provide a warning to the person buying or receiving the firearm about the possible criminal penalties that may be imposed if a person leaves a loaded firearm within the reach or easy access of a child. Any person who fails to provide this warning when selling or transferring a firearm may be fined not more than \$500 or imprisoned for not more than 30 days or both.

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

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4 SECTION 2. 175.37 (1) of the statutes is renumbered 175.37 (1s) and amended
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7 provided in sub. (1x), upon the retail commercial sale or retail commercial transfer
8 of any firearm, the seller or transferor shall provide to the buyer or transferee the
9 following written warning in block letters not less than one-fourth inch in height:
10 "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT
11 OF RESPONSIBLE FIREARM STORAGE. FIREARMS SHOULD BE STORED
12 UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM
13 THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN. FAILURE TO
14 PROPERLY LOCK AND STORE YOUR FIREARM MAY RESULT IN CIVIL
15 LIABILITY, AND IF YOU LEAVE A LOADED FIREARM WITHIN THE REACH OR
16 EASY ACCESS OF A CHILD YOU MAY BE FINED OR IMPRISONED OR BOTH
17 IF THE CHILD IMPROPERLY DISCHARGES, POSSESSES OR EXHIBITS THE
18 FIREARM."

19 SECTION 3. 175.37 (1d) of the statutes is created to read:

Handwritten notes on the left margin: "copy w/ sub" with a bracket spanning lines 2-6, and a circle around line 6.

1 175.37 (1d) DEFINITIONS. In this section:

2 (a) “Firearms dealer” has the meaning given in s. 175.35 (1) (ar).

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

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7 discharge of the firearm unless it is removed, unlocked or deactivated.

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14 (b) Paragraph (a) does not prohibit a firearms dealer from charging the person
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19 taking possession of the firearm is any of the following:

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21 (b) A law enforcement officer who will be using the firearm for law enforcement
22 purposes.

23 (c) A department or agency of the United States, this state or a political
24 subdivision of this state.

25 SECTION 6. 175.37 (2) of the statutes is amended to read:

1

175.37 (2) ~~of the~~ PENALTY. Any person who violates ~~sub. (1)~~ this section may be
2 fined not more than \$500 or imprisoned for not more than 30 days or both.

3

SECTION 7. Initial applicability.

4

(1) This act applies to the transfer of a firearm that occurs on or after the
5 effective date of this subsection.

6

SECTION 8. Effective date.

7

(1) This act takes effect on the first day of the 4th month beginning after
8 publication.

9

(END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 3/2/99

To: Representative Bock

Relating to LRB drafting number: LRB-2306

Topic

Transfer of firearms

Subject(s)

Criminal Law - guns and weapons

1. **JACKET** the draft for introduction

Peter Bock

in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jefren E. Olsen, Legislative Attorney
Telephone: (608) 266-8906