2015 SENATE BILL 776

March 3, 2016 – Introduced by Senators L. TAYLOR and RISSE, cosponsored by Representatives BERCEAU, KESSLER and SINICKI. Referred to Committee on Judiciary and Public Safety.

AN ACT to repeal 175.35 (1) (b); to renumber 175.35 (2) (a), (b), (c) and (d) and 175.35 (2j); to renumber and amend 175.35 (2) (intro.) and 175.35 (2i); to amend 20.455 (2) (gr), 175.35 (title), 175.35 (1) (at), 175.35 (2g) (a), 175.35 (2g) (b), 175.35 (2g) (c) 4. c., 175.35 (2k) (ar) 2., 175.35 (2k) (c) 2. a., 175.35 (2k) (c) 2. b., 175.35 (2k) (g), 175.35 (2k) (h), 175.35 (2L), 175.35 (2t) (a), (b) and (c), 175.60 (7) (d), 175.60 (15) (b) 4. b., 938.208 (1) (b), 938.34 (4m) (b) 2., 938.341, 941.237 (1) (d), 941.296 (1) (b), 968.20 (3) (b), 971.17 (1g) and 973.176 (1); and to create 175.33, 175.35 (2) (bm), 175.35 (2) (cm) (intro.), 175.35 (2i) (b) 2., 175.35 (2j) (b), 941.29 (1) (dm), 941.29 (1) (dn), 941.29 (1) (do), 941.29 (2) (dm), 941.29 (2) (dn) and 941.29 (2) (do) of the statutes; relating to: sales and transfers 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. This bill generally prohibits a person from selling or transferring a firearm unless the sale or transfer occurs through a federally
licensed firearms dealer and involves a background check of the prospective transferee. Under this bill, the following are excepted from that prohibition: a sale or transfer to a firearms dealer, a sale or transfer for which the waiting period for the purchase of a handgun under current law does not apply, a transfer that is by gift, bequest, or inheritance to a family member, or a transfer that is intended to be temporary and that has a purpose that is not illegal. A person who is convicted of violating the prohibition is guilty of a misdemeanor and must be fined not less than $500 nor more than $10,000, may be imprisoned for not more than nine months, and may not possess a firearm for a period of two years.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the state 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:

SECTION 1. 20.455 (2) (gr) of the statutes is amended to read:

20.455 (2) (gr) Handgun Firearm purchaser record check; checks for licenses or certifications to carry concealed weapons. All moneys received as fee payments under ss. 175.35 (2i) (a), 175.49 (5m), and 175.60 (7) (c) and (d), (13), and (15) (b) 4. a. and b. to provide services under ss. 175.35, 175.49, and 175.60.

SECTION 2. 175.33 of the statutes is created to read:

175.33 Transfer of firearms. (1) In this section:

(a) “Family member” means a spouse, parent, grandparent, sibling, child, or grandchild. The relationship may be by blood, marriage, or adoption.

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

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

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

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

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

(e) The transferor is transferring ownership of the firearm with the intent that the transfer be temporary, neither the transferor nor the transferee is prohibited from possessing a firearm under s. 941.29, and the purpose of the transfer is not prohibited by law.

(3) Any person who intentionally violates sub. (2) is guilty of a misdemeanor and shall be fined not less than $500 nor more than $10,000 and may be imprisoned for not more than 9 months. The person is also prohibited under s. 941.29 from possessing a firearm for a period of 2 years.

SECTION 3. 175.35 (title) of the statutes is amended to read:

175.35 (title) Waiting period for purchase of handguns firearms.

SECTION 4. 175.35 (1) (at) of the statutes is amended to read:

175.35 (1) (at) “Firearms restrictions record search” means a search of department of justice records to determine whether a person seeking to purchase a handgun firearm is prohibited from possessing a firearm under s. 941.29. “Firearms restrictions record search” includes a criminal history record search, a search to determine whether a person is prohibited from possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check system to determine whether a person has been ordered not to possess a firearm
under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
to determine whether the person is subject to an injunction under s. 813.12 or
813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
established by any federally recognized Wisconsin Indian tribe or band, except the
Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
or she is subject to the requirements and penalties under s. 941.29 and that has been
filed with the circuit court under s. 806.247 (3), and a search to determine whether
the person is prohibited from possessing a firearm under s. 813.123 (5m) or 813.125
(4m).

SECTION 5. 175.35 (1) (b) of the statutes is repealed.

SECTION 6. 175.35 (2) (intro.) of the statutes is renumbered 175.35 (2) (am) and
amended to read:

175.35 (2) (am) When a firearms dealer sells or transfers a handgun firearm,
he or she may not transfer possession of that handgun firearm to any other person
until all of the following have occurred: requirements under par. (cm) have been met.

SECTION 7. 175.35 (2) (a), (b), (c) and (d) of the statutes are renumbered 175.35
(2) (cm) 1., 2., 3. and 4.

SECTION 8. 175.35 (2) (bm) of the statutes is created to read:

175.35 (2) (bm) When a person sells a firearm or transfers ownership of a
firearm through a firearms dealer, the person may not transfer possession of that
firearm to any person other than the firearms dealer, and the firearms dealer may
not transfer or authorize the transfer of possession of that firearm to any person,
until all of the requirements of par. (cm) have been met. This paragraph does not
apply if a person sells a firearm, or transfers ownership of a firearm, to a firearms
dealer.
SECTION 9. 175.35 (2) (cm) (intro.) of the statutes is created to read:

175.35 (2) (cm) (intro.) All of the following must occur before a sale or transfer of a firearm occurs under par. (am) or (bm):

SECTION 10. 175.35 (2g) (a) of the statutes is amended to read:

175.35 (2g) (a) The department of justice shall promulgate rules prescribing procedures for use under sub. (2) (cm) 1. for a transferee to provide and a firearms dealer to inspect identification containing a photograph of the transferee.

SECTION 11. 175.35 (2g) (b) of the statutes is amended to read:

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

SECTION 12. 175.35 (2g) (c) 4. c. of the statutes is amended to read:

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

SECTION 13. 175.35 (2i) of the statutes is renumbered 175.35 (2i) (a) and amended to read:
175.35 (2i) (a) The department shall charge a firearms dealer a $10 fee for each firearms restrictions record search that the firearms dealer requests under sub. (2) (c) (cm) 3.

(b) 1. The firearms dealer may collect the fee under par. (a) from the transferee.

(c) The department may refuse to conduct firearms restrictions record searches for any firearms dealer who fails to pay any fee under this subsection par. (a) within 30 days after billing by the department.

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

175.35 (2i) (b) 2. If the transfer is made under sub. (2) (bm), the firearms dealer may collect from the transferor the fee under par. (a) and any additional amount to cover any costs he or she incurs in processing the transfer.

SECTION 15. 175.35 (2j) of the statutes is renumbered 175.35 (2j) (a).

SECTION 16. 175.35 (2j) (b) of the statutes is created to read:

175.35 (2j) (b) If a person sells a firearm or transfers ownership of a firearm through a firearms dealer under sub. (2) (bm), or sells a firearm or transfers ownership of a firearm to a firearms dealer, the firearms dealer shall provide the person a written receipt documenting the dealer’s participation in the sale or transfer.

SECTION 17. 175.35 (2k) (ar) 2. of the statutes is amended to read:

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

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

175.35 (2k) (c) 2. a. A statement that the Wisconsin law enforcement agency
is conducting an investigation of a crime in which a handgun firearm was used or was
attempted to be used or was unlawfully possessed.

SECTION 19. 175.35 (2k) (c) 2. b. of the statutes is amended to read:

175.35 (2k) (c) 2. b. A statement by a division commander or higher authority
within the Wisconsin law enforcement agency that he or she has a reasonable
suspicion that the person who is the subject of the information request has obtained
or is attempting to obtain a handgun firearm.

SECTION 20. 175.35 (2k) (g) of the statutes is amended to read:

175.35 (2k) (g) If a search conducted under sub. (2g) indicates that the
transferee is prohibited from possessing a firearm under s. 941.29, the attorney
general or his or her designee may shall disclose to a law enforcement agency that
the transferee has attempted to obtain a handgun firearm.

SECTION 21. 175.35 (2k) (h) of the statutes is amended to read:

175.35 (2k) (h) If a search conducted under sub. (2g) indicates a felony charge
without a recorded disposition and the attorney general or his or her designee has
reasonable grounds to believe the transferee may pose a danger to himself, herself
or another, the attorney general or his or her designee may disclose to a law
enforcement agency that the transferee has obtained or has attempted to obtain a
handgun firearm.

SECTION 22. 175.35 (2L) of the statutes is amended to read:
175.35 (2L) The department of justice shall promulgate rules providing for the
review of nonapprovals under sub. (2g) (c) 4. a. Any person who is denied the right
to purchase a handgun firearm because the firearms dealer received a nonapproval
number under sub. (2g) (c) 4. a. may request a firearms restrictions record search
review under those rules. If the person disagrees with the results of that review, the
person may file an appeal under rules promulgated by the department.

SECTION 23. 175.35 (2t) (a), (b) and (c) of the statutes are amended to read:
175.35 (2t) (a) Transfers of any handgun firearm classified as an antique by
regulations of the U.S. department of the treasury.
(b) Transfers of any handgun firearm between firearms dealers or between
wholesalers and dealers.
(c) Transfers of any handgun firearm to law enforcement or armed services
agencies.

SECTION 24. 175.60 (7) (d) of the statutes is amended to read:
175.60 (7) (d) A fee for a background check that is equal to the fee charged under
s. 175.35 (2i) (a).

SECTION 25. 175.60 (15) (b) 4. b. of the statutes is amended to read:
175.60 (15) (b) 4. b. A fee for a background check that is equal to the fee charged
under s. 175.35 (2i) (a).

SECTION 26. 938.208 (1) (b) of the statutes is amended to read:
938.208 (1) (b) Probable cause exists to believe that the juvenile possessed,
used or threatened to use a handgun, as defined in s. 175.35 (1) (b) 941.237 (1) (d),
short-barreled rifle, as defined in s. 941.28 (1) (b), or short-barreled shotgun, as
defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony
under ch. 940 if committed by an adult.
SECTION 27. 938.34 (4m) (b) 2. of the statutes is amended to read:

938.34 (4m) (b) 2. The juvenile has possessed, used or threatened to use a handgun, as defined in s. 175.35 (1) (b) 941.237 (1) (d), short-barreled rifle, as defined in s. 941.28 (1) (b), or short-barreled shotgun, as defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony under ch. 940 if committed by an adult.

SECTION 28. 938.341 of the statutes is amended to read:

938.341 Delinquency adjudication; restriction on firearm possession.

Whenever a court adjudicates a juvenile delinquent for an act that if committed by an adult in this state would be a felony or for a violation under s. 175.33 (3), the court shall inform the juvenile of the requirements and penalties under s. 941.29.

SECTION 29. 941.237 (1) (d) of the statutes is amended to read:

941.237 (1) (d) “Handgun” has the meaning given in s. 175.35 (1) (b) means any weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore.

SECTION 30. 941.29 (1) (dm) of the statutes is created to read:

941.29 (1) (dm) Convicted of a misdemeanor under s. 175.33 (3).

SECTION 31. 941.29 (1) (dn) of the statutes is created to read:

941.29 (1) (dn) Adjudicated delinquent for a violation under s. 175.33 (3).

SECTION 32. 941.29 (1) (do) of the statutes is created to read:

941.29 (1) (do) Found not guilty of a misdemeanor under s. 175.33 (3) by reason of mental disease or defect.

SECTION 33. 941.29 (2) (dm) of the statutes is created to read:
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941.29 (2) (dm) The person possesses a firearm subsequent to the conviction, as specified under sub. (1) (dm), unless 2 years have passed since the conviction.

SECTION 34. 941.29 (2) (dn) of the statutes is created to read:

941.29 (2) (dn) The person possesses a firearm subsequent to the adjudication, as specified under sub. (1) (dn), unless 2 years have passed since the adjudication.

SECTION 35. 941.29 (2) (do) of the statutes is created to read:

941.29 (2) (do) The person possesses a firearm subsequent to the finding of not guilty or not responsible by reason of mental disease or defect as specified in sub. (1) (do), unless 2 years have passed since the finding.

SECTION 36. 941.296 (1) (b) of the statutes is amended to read:

941.296 (1) (b) “Handgun” has the meaning given in s. 175.35 (1) (b) 941.237 (1) (d).

SECTION 37. 968.20 (3) (b) of the statutes is amended to read:

968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village, town or county or other custodian of a seized dangerous weapon or ammunition, if the dangerous weapon or ammunition is not required for evidence or use in further investigation and has not been disposed of pursuant to a court order at the completion of a criminal action or proceeding, shall make reasonable efforts to notify all persons who have or may have an authorized rightful interest in the dangerous weapon or ammunition of the application requirements under sub. (1). If, within 30 days after the notice, an application under sub. (1) is not made and the seized dangerous weapon or ammunition is not returned by the officer under sub. (2), the city, village, town or county or other custodian may retain the dangerous weapon or ammunition and authorize its use by a law enforcement agency, except that a dangerous weapon used in the commission of a homicide or a handgun, as defined
in s. 175.35 (1) (b) 941.237 (1) (d), may not be retained. If a dangerous weapon other
than a firearm is not so retained, the city, village, town or county or other custodian
shall safely dispose of the dangerous weapon or, if the dangerous weapon is a motor
vehicle, as defined in s. 340.01 (35), sell the motor vehicle following the procedure
under s. 973.075 (4). If a firearm or ammunition is not so retained, the city, village,
town or county or other custodian shall ship it to the state crime laboratories and it
is then the property of the laboratories. A person designated by the department of
justice may destroy any material for which the laboratories have no use or arrange
for the exchange of material with other public agencies. In lieu of destruction,
shoulder weapons for which the laboratory has no use shall be turned over to the
department of natural resources for sale and distribution of proceeds under s. 29.934
or for use under s. 29.938.

SECTION 38. 971.17 (1g) of the statutes is amended to read:

971.17 (1g) NOTICE OF RESTRICTION ON FIREARM POSSESSION. If the defendant
under sub. (1) is found not guilty of a felony, or of a violation under s. 175.33 (3), by
reason of mental disease or defect, the court shall inform the defendant of the
requirements and penalties under s. 941.29.

SECTION 39. 973.176 (1) of the statutes is amended to read:

973.176 (1) FIREARM POSSESSION. Whenever a court imposes a sentence or
places a defendant on probation regarding a felony conviction or regarding a
conviction for a misdemeanor under s. 175.33 (3), the court shall inform the
defendant of the requirements and penalties under s. 941.29.

SECTION 40. Initial applicability.

(1) This act first applies to sales or transfers of ownership of firearms that occur
on the effective date of this subsection.
 SECTION 41. Effective date.

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

(END)