

2017 DRAFTING REQUEST**Assembly Amendment (AA-ASA1-AB65)**For: **Gordon Hintz (608) 266-2254**Drafter: **chanaman**By: **Chris**

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Date: **2/20/2018**

May Contact:

Same as LRB:

Submit via email: **YES**Requester's email: **Rep.Hintz@legis.wisconsin.gov**

Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Add sales to family members as an exception

Instructions:

No specific instructions given

Drafting History:

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FE Sent For:

<END>



State of Wisconsin
2017 - 2018 LEGISLATURE

a 2253/1
LRBs0365/1
CMH:ahe

AA to

ASSEMBLY SUBSTITUTE AMENDMENT,
TO ASSEMBLY BILL 65

1 AN ACT *to repeal* 175.35 (1) (b); *to renumber* 175.35 (2) (a), (b), (c) and (d) and
2 175.35 (2j); *to renumber and amend* 175.35 (2) (intro.) and 175.35 (2i); *to*
3 *amend* 20.455 (2) (gr), 175.35 (title), 175.35 (1) (at), 175.35 (2g) (a), 175.35 (2g)
4 (b), 175.35 (2k) (ar) 2., 175.35 (2k) (c) 2. a., 175.35 (2k) (c) 2. b., 175.35 (2k) (g),
5 175.35 (2k) (h), 175.35 (2L), 175.35 (2t) (a), (b) and (c), 175.60 (7) (d), 175.60 (15)
6 (b) 4. b., 938.208 (1) (b), 938.34 (4m) (b) 2., 938.341, 941.237 (1) (d), 941.296 (1)
7 (b), 968.20 (3) (b), 971.17 (1g) and 973.176 (1); and *to create* 175.33, 175.35 (2)
8 (bm), 175.35 (2) (cm) (intro.), 175.35 (2i) (b) 2., 175.35 (2j) (b) and 941.29 (1m)
9 (dm), (dn) and (do) of the statutes; **relating to:** sales and transfers of firearms
10 and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

Current law provides that certain 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 substitute amendment generally prohibits a

person from selling or transferring any firearm unless the sale or transfer occurs through a federally licensed firearms dealer and involves a background check of the prospective transferee. Under this substitute amendment, the following are excepted from that prohibition: a sale or transfer to a firearms dealer, to law enforcement, or to a member of the armed services; a sale or transfer of a firearm classified as antique; a transfer that is by gift, bequest, sale, 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.

At the locations indicated, amend the Substitute amendment as follows:
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Page 1, line 1: delete the material beginning with that line and ending with "(END)" and substitute:

- 1 "SECTION 1. 20.455 (2) (gr) of the statutes is amended to read:
- 2 20.455 (2) (gr) *Handgun Firearm purchaser record check; checks for licenses or*
- 3 *certifications to carry concealed weapons.* All moneys received as fee payments under
- 4 ss. 175.35 (2i) (a), 175.49 (5m), and 175.60 (7) (c) and (d), (13), and (15) (b) 4. a. and
- 5 b. to provide services under ss. 175.35, 175.49, and 175.60.
- 6 SECTION 2. 175.33 of the statutes is created to read:
- 7 **175.33 Transfer of firearms. (1)** In this section:
- 8 (a) "Family member" means a spouse, parent, grandparent, sibling, child, or
- 9 grandchild. The relationship may be by blood, marriage, or adoption.
- 10 (b) "Firearms dealer" has the meaning given in s. 175.35 (1) (ar).
- 11 (2) No person may sell or transfer ownership of a firearm, or purchase or obtain
- 12 ownership of a firearm, unless one of the following applies:
- 13 (a) The seller or transferor is a firearms dealer.
- 14 (b) The seller or transferor makes the sale or transfer to or through a firearms
- 15 dealer and obtains a receipt under s. 175.35 (2j) (b).

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

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

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

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

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

15 **175.35 (title) Purchase of handguns firearms.**

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

17 175.35 (1) (at) "Firearms restrictions record search" means a search of
18 department of justice records to determine whether a person seeking to purchase a
19 handgun firearm is prohibited from possessing a firearm under s. 941.29. "Firearms
20 restrictions record search" includes a criminal history record search, a search to
21 determine whether a person is prohibited from possessing a firearm under s. 51.20
22 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check
23 system to determine whether a person has been ordered not to possess a firearm
24 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
25 to determine whether the person is subject to an injunction under s. 813.12 or

1 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
2 established by any federally recognized Wisconsin Indian tribe or band, except the
3 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
4 or she is subject to the requirements and penalties under s. 941.29 and that has been
5 filed with the circuit court under s. 813.128 (3g), and a search to determine whether
6 the person is prohibited from possessing a firearm under s. 813.123 (5m) or 813.125
7 (4m).

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

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

11 175.35 (2) (am) When a firearms dealer sells or transfers a handgun firearm,
12 he or she may not transfer possession of that handgun firearm to any other person
13 until all of the ~~following have occurred:~~ requirements under par. (cm) have been met.

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

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

17 175.35 (2) (bm) When a person sells a firearm or transfers ownership of a
18 firearm through a firearms dealer, the person may not transfer possession of that
19 firearm to any person other than the firearms dealer, and the firearms dealer may
20 not transfer or authorize the transfer of possession of that firearm to any person,
21 until all of the requirements of par. (cm) have been met. This paragraph does not
22 apply if a person sells a firearm, or transfers ownership of a firearm, to a firearms
23 dealer.

24 **SECTION 9.** 175.35 (2) (cm) (intro.) of the statutes is created to read:

1 175.35 (2) (cm) (intro.) All of the following must occur before a sale or transfer
2 of a firearm occurs under par. (am) or (bm):

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

4 175.35 (2g) (a) The department of justice shall promulgate rules prescribing
5 procedures for use under sub. (2) (cm) 1. for a transferee to provide and a firearms
6 dealer to inspect identification containing a photograph of the transferee.

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

8 175.35 (2g) (b) The department of justice shall promulgate rules prescribing
9 a notification form for use under sub. (2) (cm) 2. and 3. requiring the transferee to
10 provide his or her name, date of birth, gender, race and social security number, and
11 other identification necessary to permit an accurate firearms restrictions record
12 search under par. (c) 3. and the required notification under par. (c) 4. The department
13 of justice shall make the forms available at locations throughout the state.

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

16 175.35 (2i) (a) The department shall charge a firearms dealer a \$10 fee for each
17 firearms restrictions record search that the firearms dealer requests under sub. (2)
18 (e) (cm) 3.

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

20 (c) The department may refuse to conduct firearms restrictions record searches
21 for any firearms dealer who fails to pay any fee under ~~this subsection~~ par. (a) within
22 30 days after billing by the department.

23 **SECTION 13.** 175.35 (2i) (b) 2. of the statutes is created to read:

1 175.35 (2i) (b) 2. If the transfer is made under sub. (2) (bm), the firearms dealer
2 may collect from the transferor the fee under par. (a) and any additional amount to
3 cover any costs he or she incurs in processing the transfer.

4 **SECTION 14.** 175.35 (2j) of the statutes is renumbered 175.35 (2j) (a).

5 **SECTION 15.** 175.35 (2j) (b) of the statutes is created to read:

6 175.35 (2j) (b) If a person sells a firearm or transfers ownership of a firearm
7 through a firearms dealer under sub. (2) (bm), or sells a firearm or transfers
8 ownership of a firearm to a firearms dealer, the firearms dealer shall provide the
9 person a written receipt documenting the dealer's participation in the sale or
10 transfer.

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

12 175.35 (2k) (ar) 2. Check each notification form received under sub. (2j) (a)
13 against the information recorded by the department regarding the corresponding
14 request for a firearms restrictions record search under sub. (2g). If the department
15 previously provided a unique approval number regarding the request and nothing
16 in the completed notification form indicates that the transferee is prohibited from
17 possessing a firearm under s. 941.29, the department shall destroy all records
18 regarding that firearms restrictions record search within 30 days after receiving the
19 notification form.

20 **SECTION 17.** 175.35 (2k) (c) 2. a. of the statutes is amended to read:

21 175.35 (2k) (c) 2. a. A statement that the Wisconsin law enforcement agency
22 is conducting an investigation of a crime in which a handgun firearm was used or was
23 attempted to be used or was unlawfully possessed.

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

1 175.35 (2k) (c) 2. b. A statement by a division commander or higher authority
2 within the Wisconsin law enforcement agency that he or she has a reasonable
3 suspicion that the person who is the subject of the information request has obtained
4 or is attempting to obtain a handgun firearm.

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

6 175.35 (2k) (g) If a search conducted under sub. (2g) indicates that the
7 transferee is prohibited from possessing a firearm under s. 941.29, the attorney
8 general or his or her designee ~~may~~ shall disclose to a law enforcement agency that
9 the transferee has attempted to obtain a handgun firearm.

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

11 175.35 (2k) (h) If a search conducted under sub. (2g) indicates a felony charge
12 without a recorded disposition and the attorney general or his or her designee has
13 reasonable grounds to believe the transferee may pose a danger to himself, herself
14 or another, the attorney general or his or her designee may disclose to a law
15 enforcement agency that the transferee has obtained or has attempted to obtain a
16 handgun firearm.

17 **SECTION 21.** 175.35 (2L) of the statutes is amended to read:

18 175.35 (2L) The department of justice shall promulgate rules providing for the
19 review of nonapprovals under sub. (2g) (c) 4. a. Any person who is denied the right
20 to purchase a handgun firearm because the firearms dealer received a nonapproval
21 number under sub. (2g) (c) 4. a. may request a firearms restrictions record search
22 review under those rules. If the person disagrees with the results of that review, the
23 person may file an appeal under rules promulgated by the department.

24 **SECTION 22.** 175.35 (2t) (a), (b) and (c) of the statutes are amended to read:

1 175.35 (2t) (a) Transfers of any handgun firearm classified as an antique by
2 regulations of the U.S. department of the treasury.

3 (b) Transfers of any handgun firearm between firearms dealers or between
4 wholesalers and dealers.

5 (c) Transfers of any handgun firearm to law enforcement or armed services
6 agencies.

7 **SECTION 23.** 175.60 (7) (d) of the statutes is amended to read:

8 175.60 (7) (d) A fee for a background check that is equal to the fee charged under
9 s. 175.35 (2i) (a).

10 **SECTION 24.** 175.60 (15) (b) 4. b. of the statutes is amended to read:

11 175.60 (15) (b) 4. b. A fee for a background check that is equal to the fee charged
12 under s. 175.35 (2i) (a).

13 **SECTION 25.** 938.208 (1) (b) of the statutes is amended to read:

14 938.208 (1) (b) Probable cause exists to believe that the juvenile possessed,
15 used or threatened to use a handgun, as defined in s. ~~175.35 (1) (b)~~ 941.237 (1) (d),
16 short-barreled rifle, as defined in s. 941.28 (1) (b), or short-barreled shotgun, as
17 defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony
18 under ch. 940 if committed by an adult.

19 **SECTION 26.** 938.34 (4m) (b) 2. of the statutes is amended to read:

20 938.34 (4m) (b) 2. The juvenile has possessed, used or threatened to use a
21 handgun, as defined in s. ~~175.35 (1) (b)~~ 941.237 (1) (d), short-barreled rifle, as
22 defined in s. 941.28 (1) (b), or short-barreled shotgun, as defined in s. 941.28 (1) (c),
23 while committing a delinquent act that would be a felony under ch. 940 if committed
24 by an adult.

25 **SECTION 27.** 938.341 of the statutes is amended to read:

1 **938.341 Delinquency adjudication; restriction on firearm possession.**

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

5 **SECTION 28.** 941.237 (1) (d) of the statutes is amended to read:

6 941.237 (1) (d) "Handgun" ~~has the meaning given in s. 175.35 (1) (b)~~ means any
7 weapon designed or redesigned, or made or remade, and intended to be fired while
8 held in one hand and to use the energy of an explosive to expel a projectile through
9 a smooth or rifled bore.

10 **SECTION 29.** 941.29 (1m) (dm), (dn) and (do) of the statutes are created to read:

11 941.29 (1m) (dm) The person has been convicted of a misdemeanor under s.
12 175.33 (3), unless at least 2 years have passed since the conviction.

13 (dn) The person has been adjudicated delinquent for a violation under s. 175.33
14 (3), unless at least 2 years have passed since the adjudication.

15 (do) The person has been found not guilty of a misdemeanor under s. 175.33 (3)
16 by reason of mental disease or defect, unless at least 2 years have passed since the
17 finding.

18 **SECTION 30.** 941.296 (1) (b) of the statutes is amended to read:

19 941.296 (1) (b) "Handgun" has the meaning given in s. ~~175.35 (1) (b)~~ 941.237
20 (1) (d).

21 **SECTION 31.** 968.20 (3) (b) of the statutes is amended to read:

22 968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
23 town or county or other custodian of a seized dangerous weapon or ammunition, if
24 the dangerous weapon or ammunition is not required for evidence or use in further
25 investigation and has not been disposed of pursuant to a court order at the

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

21 **SECTION 32.** 971.17 (1g) of the statutes is amended to read:

22 971.17 (1g) NOTICE OF RESTRICTION ON FIREARM POSSESSION. If the defendant
23 under sub. (1) is found not guilty of a felony, or of a violation under s. 175.33 (3), by
24 reason of mental disease or defect, the court shall inform the defendant of the
25 requirements and penalties under s. 941.29.

1 **SECTION 33.** 973.176 (1) of the statutes is amended to read:

2 973.176 (1) FIREARM POSSESSION. Whenever a court imposes a sentence or
3 places a defendant on probation regarding a felony conviction or regarding a
4 conviction for a misdemeanor under s. 175.33 (3), the court shall inform the
5 defendant of the requirements and penalties applicable to him or her under s. 941.29
6 (1m) or (4m).

7 **SECTION 34. Initial applicability.**

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

10 **SECTION 35. Effective date.**

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

13

(END) ¹¹