

1993 Assembly Bill 220

Date of enactment: **December 10, 1993**  
Date of publication\*: **December 24, 1993**

# 1993 WISCONSIN ACT 91

AN ACT to renumber and amend 941.26 (1); to amend 941.26 (3); to repeal and recreate 941.26 (2); and to create 941.26 (4) of the statutes, relating to: oleoresin of capsicum and tear gas, granting rule-making authority and providing a penalty.

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

**SECTION 1.** 941.26 (1) of the statutes is renumbered 941.26 (1) (a) and amended to read:

941.26 (1) (a) No person may sell, possess, use or transport any machine gun or other full automatic firearm. ~~Ne~~

(b) Except as provided in sub. (4), no person may sell, possess, use or transport any tear gas bomb, hand grenade, projectile or shell or any other container of any kind or character into which tear gas or any similar substance is used or placed for use to cause bodily discomfort, panic, or damage to property.

**SECTION 2.** 941.26 (2) of the statutes is repealed and recreated to read:

941.26 (2) (a) Any person violating sub. (1) (a) is guilty of a Class E felony.

(b) Any person violating sub. (1m) is guilty of a Class C felony.

(c) Except as provided in par. (d), any person who violates sub. (1) (b) regarding the possession, noncommercial transportation or use of the bomb, grenade, projectile, shell or container under sub. (1) (b) is guilty of a Class A misdemeanor.

(d) Any person who violates sub. (1) (b) regarding the possession, noncommercial transportation or use of the bomb, grenade, projectile, shell or container under sub. (1) (b) in self-defense or defense of another, as allowed under s. 939.48, is subject to a Class D forfeiture.

(e) Any person who violates sub. (1) (b) regarding the sale or commercial transportation of the bomb, grenade, projectile, shell or container under sub. (1) (b) is guilty of a Class E felony.

(f) Any person who violates sub. (1) (b) regarding the use of the bomb, grenade, projectile, shell or container under sub. (1) (b) to cause bodily harm or bodily discomfort to a person who the actor knows, or has reason to know, is a peace officer who is acting in an official capacity is guilty of a Class D felony.

(g) Any person who violates sub. (1) (b) regarding the use of the bomb, grenade, projectile, shell or container under sub. (1) (b) during his or her commission of another crime to cause bodily harm or bodily discomfort to another or who threatens to use the bomb, grenade, projectile, shell or container during his or her commission of another crime to incapacitate another person is guilty of a Class E felony.

**SECTION 3.** 941.26 (3) of the statutes is amended to read:

941.26 (3) This section does not apply to the sale, possession, modification, use or transportation of any weapons or containers under sub. (1) or (1m) to or by any armed forces or national guard personnel in the line of duty, any civil enforcement officer of the state or of any city or county, ~~or. This section does not apply to the sale, possession, modification, use or transportation of weapons under sub. (1) (a) or (1m) to or by~~ any person duly authorized by the chief of police of any city or the sheriff of any county to sell, possess, modify, use or transport

~~those weapons or containers.~~ This section does not apply to the restoration of any weapon under sub. (1) ~~(a)~~ or (1m) by a person having a license to collect firearms as curios or relics issued by the U.S. department of the treasury. The restriction on transportation contained in this section does not apply to common carriers.

**SECTION 4.** 941.26 (4) of the statutes is created to read:

941.26 (4) (a) Subsections (1) to (3) do not apply to any device or container that contains a combination of oleoresin of capsicum and inert ingredients but does not contain any other gas or substance that will cause bodily discomfort.

(b) Whoever intentionally uses a device or container described under par. (a) to cause bodily harm or bodily discomfort to another is guilty of a Class A misdemeanor.

(c) Paragraph (b) does not apply to any of the following:

1. Any person acting in self-defense or defense of another, as allowed under s. 939.48.

2. Any peace officer acting in his or her official capacity.

3. Any armed forces or national guard personnel acting in the line of duty.

(d) Whoever intentionally uses a device or container described under par. (a) to cause bodily harm or bodily discomfort to a person who the actor knows, or has reason to know, is a peace officer who is acting in an official capacity is guilty of a Class D felony.

(e) Whoever uses a device or container described under par. (a) during his or her commission of another crime to cause bodily harm or bodily discomfort to another or who threatens to use the device or container during his or her commission of another crime to incapacitate another person is guilty of a Class E felony.

(f) Any person who offers for sale a device or container described under par. (a) and who leaves in his or her place of business an unsold device or container in a place where customers have ready access to the device or container is subject to a Class C forfeiture.

(g) 1. Any person who sells or distributes a device or container described under par. (a) to a person who has not attained 18 years of age is subject to a Class C forfeiture.

2. A person who proves all of the following by a preponderance of the evidence has a defense to prosecution under subd. 1:

a. That the purchaser or distributee falsely represented that he or she had attained the age of 18 and presented an identification card.

b. That the appearance of the purchaser or distributee was such that an ordinary and prudent person would

believe that the purchaser or distributee had attained the age of 18.

c. That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser or distributee and in the belief that the purchaser or distributee had attained the age of 18.

(h) Any person who intentionally offers for sale a device or container in a place where customers have direct access to the device or container is guilty of a Class A misdemeanor.

(i) 1. Whoever intentionally sells a device or container described under par. (a) that does not meet the safety criteria provided in rules promulgated under subd. 2 is guilty of a Class A misdemeanor.

2. The department of justice shall promulgate rules providing safety criteria for devices or containers described under par. (a). In promulgating the rules, the department shall do all of the following:

a. Consider recommendations of law enforcement agencies, as defined in s. 165.83 (1) (b), and manufacturers of devices or containers described under par. (a).

b. Provide allowable amounts of oleoresin of capsicum, inert ingredients and total ingredients for a device or container described under par. (a).

c. Provide a maximum effective range for a device or container described under par. (a).

d. Provide other requirements to ensure that a device or container described under par. (a) is effective and appropriate for self-defense purposes.

3. Subdivisions 1 and 2 do not apply to sales of devices or containers described under par. (a) for use by peace officers or armed forces or national guard personnel.

(j) 1. Whoever intentionally sells a device or container described under par. (a) without providing the purchaser with all of the following is guilty of a Class A misdemeanor:

a. A proper label on the device or container.

b. Written safety instructions for using the device or container.

c. A package that contains a clear, highlighted message to the purchaser cautioning him or her to read and follow the safety instructions.

2. The department of justice shall promulgate rules providing the requirements for labeling, packaging and written safety instructions under subd. 1.

(k) Any person who has not attained the age of 18 years and who possesses a device or container described under par. (a) is subject to a Class E forfeiture.

**SECTION 5. Effective date.** This act takes effect on the first day of the 10th month beginning after publication.