



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1109/P2
CMH:cdc&skw

DOA:.....Potts, BB0398 - Universal background check

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

JUSTICE

Universal background check requirement for all firearm transfers

Current law provides that a federally licensed firearms dealer may not transfer a handgun after a sale until the dealer has performed a background check on the prospective transferee to determine if he or she is prohibited from possessing a firearm under state or federal law. This bill generally prohibits any person from transferring any firearm, including the frame or receiver of a firearm, unless the transfer occurs through a federally licensed firearms dealer and involves a background check of the prospective transferee. Under the bill, the following are excepted from that prohibition: a transfer to a firearms dealer or to a law enforcement or armed services agency; a transfer of a firearm classified as antique; or a transfer that is by gift, bequest, or inheritance to a family member. 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.

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.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

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) “Firearm” includes the frame or receiver of a firearm.

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

(d) “Transfer” has the meaning given in s. 175.35 (1) (br).

(2) No person may transfer ownership of a firearm, or be transferred ownership of a firearm, unless one of the following applies:

(a) The transferor is a firearms dealer.

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

(c) The 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 or federal law, and the transferee is at least 18 years of age.

(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) **Purchase Transfer of handguns firearms.**

SECTION 4. 175.35 (1) (b) of the statutes is repealed.

SECTION 5. 175.35 (1) (br) of the statutes is created to read:

175.35 (1) (br) "Transfer" includes to sell, assign, pledge, lease, loan, give away, or otherwise dispose of.

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~~ transfers a handgun firearm, including the frame or receiver of a 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 transfers a firearm, including the frame or receiver of a firearm, through a firearms dealer, the transfer of possession of that firearm may not be made until all of the requirements of par. (cm) have been met.

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 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) 1. of the statutes is amended to read:

175.35 **(2g)** (b) 1. 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) (b) 2. of the statutes is amended to read:

175.35 **(2g)** (b) 2. The department of justice shall ensure that each notification form under subd. 1. requires the transferee to indicate that he or she is not purchasing receiving a transfer of the firearm with the purpose or intent to transfer the firearm to a person who is prohibited from possessing a firearm under state or federal law and that each notification form informs the transferee that making a false statement with regard to this purpose or intent is a Class H felony.

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) (e) (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 transfers a firearm through a firearms dealer under sub. (2) (bm), or transfers a firearm to a firearms dealer, the firearms dealer shall provide the person a written receipt documenting the dealer's participation in the 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 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~~ receive a transfer of 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. 175.35 (3) (b) 2. of the statutes is amended to read:

175.35 (3) (b) 2. A person who violates sub. (2e) by intentionally providing false information regarding whether he or she is ~~purchaseing~~ receiving a transfer of the firearm with the purpose or intent to transfer the firearm to another who the person knows or reasonably should know is prohibited from possessing a firearm under state or federal law is guilty of a Class H felony. The penalty shall include a fine that is not less than \$500.

SECTION 25. 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 26. 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 27. 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 28. 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 29. 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 (2), the court shall inform the juvenile of the requirements and penalties under s. 941.29.

SECTION 30. 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 31. 941.29 (1m) (dm), (dn) and (do) of the statutes are created to read:

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

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

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

SECTION 32. 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 33. 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 34. 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 (2), by reason of mental disease or defect, the court shall inform the defendant of the requirements and penalties under s. 941.29.

SECTION 35. 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 (2), the court shall inform the defendant of the requirements and penalties applicable to him or her under s. 941.29 (1m) or (4m).

(END)