



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 763

**Assembly Substitute
Amendment 2**

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2005 Assembly Bill 763 permits a person to carry a concealed weapon, except in places where it is prohibited, if the person holds a license to carry a concealed weapon or a valid out-of-state license to carry a concealed weapon. Under the bill, licenses are issued by the Department of Justice (DOJ).

The substitute amendment makes the following changes to the bill:

Information on License Application

The bill requires DOJ to design an application form for use by individuals who apply for a license and a renewal form for individuals to renew a license. The form must require the applicant to provide only his or her name, address, date of birth, race, sex, height, weight, and hair and eye color.

The substitute amendment provides that the forms must also require the applicant to provide his or her state identification card number, which is the number assigned to the person on his or her driver's license or state identification card.

Notarized Statement

The bill requires a person who is applying for a license to submit a notarized statement that states that the information in the person's license application form and any document submitted with the application is true and complete to the best of the person's knowledge.

The substitute amendment provides that, before a person submits an application for a license, the person must display a valid driver's license or state identification card to the notary who is to notarize the statement. Before notarizing that statement, the notary must verify the person's identity using that document or card and verify that the name and the state identification card number listed on the license or identification card are the same as the name and state identification card number listed on the application.

Persons With Severe Physical Disability

Under *the bill* a person may not be issued a license if the person has a severe physical disability that prevents him or her from safely handling a weapon and that, if the individual were handling a weapon, would cause the individual to pose a significant public safety risk. The bill requires DOJ make this determination and to promulgate rules specifying the procedures and definitions that it is required to apply when determining whether an individual is ineligible for a license because he or she has a severe physical disability.

Under *the substitute amendment*, DOJ must design a form for use by persons providing firearms training that must include a box for the trainer to check to indicate that a person is eligible because he or she does not have a severe physical disability, as defined in the bill. DOJ may determine that a person is ineligible for a license based upon a severe physical disability only if the application form that the person submits does not indicate that the person is eligible. DOJ may override an indication that a person is not eligible due to a disability. Also, under the substitute amendment, this eligibility criterion does not apply to a person who is a certified instructor of a firearm training or firearm safety course or class.

Firearms Training

The bill requires a person applying for a license to have successfully completed a firearm training or firearm safety course or class that meets specifications under the bill; to have participated in organized shooting competitions or military, law enforcement, or security training that is substantially equivalent; or to be a certified instructor of a firearm training or firearm safety course or class to be eligible for a license.

The substitute amendment provides that a firearm training or firearm safety course or class must be conducted by an instructor certified by the state in which the course or class was conducted or by a national or state organization that certifies firearms instructors.

The substitute amendment also provides that DOJ may not specify the number of hours of instruction that a course or class must provide, either in the aggregate or with respect to any of the individual topics required to be covered.

Convictions of Offenses Relating to License

Under *the bill*, a person does not qualify for a license if he or she was convicted of submitting an intentionally false notarized statement with his or her license application or renewal form or intentionally making a false statement to DOJ in requesting or in connection with the issuance of an emergency license; intentionally failing to notify DOJ within 10 days after being charged under federal law or the law of another state with any crime or any drunk driving offense; or intentionally failing to relinquish or deliver a license document to DOJ after the person's license has been suspended or revoked.

The substitute amendment provides that such an offense must have occurred within the preceding three years in order for a person to be ineligible for a license.

Misdemeanor Stalking Convictions

Under *the bill*, a person who has been convicted of a misdemeanor crime of violence within the preceding three years or who has been convicted of a felony may not receive a license.

The substitute amendment provides that an individual who has been convicted of a misdemeanor stalking violation under prior Wisconsin law or of a comparable federal law or law of another state may not receive a license.

Petition to Disqualify Certain Misdemeanants

Under *the substitute amendment*, if DOJ receives an application for a license from a person who has committed a misdemeanor crime of violence and the person is eligible for a license because the person has not committed such an offense or been serving a sentence or under supervision for such an offense within the preceding three years, DOJ may file a petition asking the circuit court to enter an order barring the person from receiving a license. DOJ may only file such a petition if the petition alleges that, based on the person's commission of one or more misdemeanor crimes of violence, the person would pose a substantial risk to others if the person were issued a license.

The court may hold an evidentiary hearing on the petition and must expedite the proceeding. If the court determines, by clear and convincing evidence, that the person would pose a substantial risk to others if the person were issued a license, the court must enter an order prohibiting the person from obtaining a license.

If the court denies DOJ's petition, the court must award the person costs and reasonable attorney fees.

Emergency License

Under *the bill*, unless DOJ knows that a person is not qualified for a license, DOJ *may* issue a license to an individual who has not met the training requirements if DOJ determines that immediate licensure is warranted to protect the individual from death or great bodily harm.

Under *the substitute amendment*, DOJ is *required* to issue an emergency license to a person if DOJ determines that immediate licensure is warranted to protect the individual from death or great bodily harm. Also, under the substitute amendment, if the person requesting an emergency license has obtained a domestic abuse or harassment temporary restraining order or injunction, DOJ must presume that immediate licensure is warranted to protect the individual from death or great bodily harm.

Prohibiting Licensees from Carrying While Under the Influence of an Intoxicant

The bill provides that a person may not carry a concealed weapon if his or her alcohol concentration exceeds 0.08.

The substitute amendment provides that a person may not carry a concealed weapon if his or her alcohol concentration exceeds 0.08 *or* if the person is under the influence of an intoxicant to a degree which materially impairs his or her ability to handle the weapon. Under the substitute amendment, a

person may be charged with and a prosecutor may proceed upon a complaint based upon both of the criteria for acts arising out of the same incident or occurrence.

Places Where Carrying a Concealed Weapon Prohibited

Under *the bill*, licensees and out-of-state licensees are prohibited from carrying a concealed weapon in certain places, including police stations, jails, and courthouses.

The substitute amendment prohibits licensees and out-of-state licensees from carrying a concealed weapon in the following additional places:

- A licensed child care center. This provision does not apply to the owner of the child care center or, if the child care center is located in a residence, to a person who resides in that residence.
- A building or part of a building that is used for a domestic violence victim services program or by an organization that provides a safe haven for victims of domestic violence.
- A building or part of a building that is used for religious worship or another religious purpose, except that the owner of the building or an authorized representative of the owner may permit a licensee or out-of-state licensee to carry a concealed weapon in the building or part of the building.
- A health-related facility, except that the director of any health-related facility, or his or her authorized representative, may permit a licensee or out-of-state licensee to carry a concealed weapon in the health-related facility. "Health-related facility" is defined as a health care facility, a clinic or office that is used by a physician, an adult family home, a residential care apartment complex, a nursing home, a community-based residential facility, or a home health agency.
- A building located on the campus of a private or public university, college, or technical college, except that the president of a private university or college, the chancellor of a University of Wisconsin four-year college campus, the dean of a University of Wisconsin two-year college campus, or the director of a technical college district may permit a licensee or out-of-state licensee to carry a concealed weapon in a building under his or her jurisdiction.
- A building owned by a nonprofit organization, whose primary function is to provide direct services to children or families, in or at which the nonprofit organization provides direct services to children or families.

Identification Cards for Retired Law Enforcement Officers

The bill allows qualified retired law enforcement officers to carry a concealed weapon. While carrying a concealed weapon, a retired officer must also carry a photographic identification document issued by the retired officer's former employer.

The substitute amendment requires state law enforcement agencies that do not issue photographic identification cards to their officers to issue such a card to an officer formerly employed by that agency upon request of the former officer and at the officer's own expense, unless the officer meets one of the criteria that may require an officer to relinquish his or her identification card upon retirement under the bill.

Appealing DOJ Determinations

The bill provides that a person aggrieved by an action by DOJ denying an application for a license, suspending or revoking a license, or denying certification of an instructor may appeal directly to the circuit court of his or her county.

The substitute amendment requires DOJ to promulgate rules providing for the review of any action denying an application, suspending or revoking a license, or denying certification of an instructor. A person may appeal such an action by DOJ to the circuit court, but only if the person has completed the DOJ review process.

Trespass by Going Armed in a Part of a Nonresidential Building

The bill amends current trespass law to provide that a person who, while armed with a concealed weapon, enters or remains in any part of a nonresidential building that the person does not own or occupy after the owner of the building, if he or she has not leased it to another person, or the occupant of the building has notified the person not to enter or remain in the building while going armed with a concealed weapon or with that type of concealed weapon is subject to a Class B forfeiture (a forfeiture not to exceed \$1,000).

The substitute amendment provides that a person may not enter or remain in any part of a nonresidential building, while armed with a concealed weapon, after the owner or occupant of *that part of the building* has notified the person not to enter or remain in *that part of the building* while going armed with a concealed weapon or with that type of concealed weapon.

Providing Licensee Information to Law Enforcement Through the Department of Transportation

Under *the substitute amendment*, DOJ must notify the Department of Transportation (DOT) of a person's name, date of birth, and sex, the date on which the person was last issued a license to carry a concealed weapon, and any vehicle registration number provided by the person on his or her application for that license when: (a) the person is issued a license to carry a concealed weapon; (b) the person's license is renewed; (c) the person's license expires and is not renewed; (d) the person's license is suspended or revoked; or (e) the person's suspended license is reinstated.

Using this information, DOT must maintain a record of each vehicle owner who is a licensee. If DOT's records indicate that a vehicle owner is a licensee, DOT must, in its registration records for that vehicle, include a confidential entry that informs a law enforcement officer who requests information regarding that vehicle that the owner is a licensee.

A law enforcement officer may request this information only if he or she is conducting a lawful vehicle stop. Neither DOT nor any of its employees may make this information available to the public.

In addition, neither DOT nor any of its employees may store, maintain, format, sort, or access information regarding licensees based upon their status as licensees. A person who violates any of these provisions may be fined not more than \$500 or sentenced to a term of imprisonment of not more than 30 days or both.

Access to Information by Law Enforcement

The bill provides that a law enforcement agency may be provided with information concerning a licensee only for certain purposes, such as confirming that a license produced by an individual at the request of a law enforcement officer is valid.

The substitute amendment adds a purpose for which a law enforcement officer who is employed by DOJ may obtain license information. Specifically, a law enforcement officer employed by DOJ may obtain such information to investigate whether an individual complied with the requirement to notify DOJ if the individual has been charged under federal law or the law of another state with any crime or any drunk driving offense or whether an individual whose license has been revoked has delivered the license document to DOJ.

The substitute amendment also provides that neither DOJ nor any employee may make information obtained concerning a licensee available to the public except in the context of a prosecution for an offense in which the person's status as a licensee is relevant, in the context of a proceeding to request the court to deny licensure of a misdemeanor, or through the statistical report required under the bill.

Also under the substitute amendment, neither a law enforcement agency nor any of its employees may make information regarding a licensee that was obtained from DOJ or DOT available to the public except in the context of a prosecution for an offense in which the person's status as a licensee is relevant. In addition, neither a law enforcement agency nor any of its employees may store or maintain information regarding an individual based upon the individual's status as a licensee or may sort or access information regarding vehicle stops, investigations, civil or criminal offenses, or other activities involving the agency based on the status as licensees of any individuals involved.

Any person who violates any of the above prohibitions may be fined not more than \$500 or sentenced to a term of imprisonment of not more than 30 days or both.

Excessive Force Based Upon License Status

The substitute amendment provides that any law enforcement officer who uses excessive force based solely on an individual's status as a licensee may be fined not more than \$500 or sentenced to a term of imprisonment of not more than 30 days or both.

DOJ Enforcement Authority

The substitute amendment specifically authorizes DOJ to enforce the bill's provisions relating to: (a) submitting an intentionally false notarized statement as a part of a regular or renewal application for a license; (b) intentionally making a false statement in connection with the issuance of an emergency license; (c) intentionally failing to notify DOJ if the individual has been charged under federal law or the

law of another state with any crime or any drunk driving offense; and (d) intentionally failing to deliver a license document to DOJ when an individual's license has been revoked.

Effective Date

Under *the bill*, the effective date of the legislation is the first day of the second month beginning after publication.

The substitute amendment provides that the effective date is the first day of the fourth month beginning after publication.

Legislative History

Assembly Substitute Amendment 2 was offered by the Joint Committee on Finance on November 30, 2005. On that date, the Joint Committee on Finance recommended adoption of the substitute amendment on a vote of Ayes, 14; Noes, 0; Absent, 2, and recommended passage of the bill, as amended, on a vote of Ayes, 12; Noes, 2; Absent, 2.

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