



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Firearm Regulation in Wisconsin

Over the past several decades, Congress and state governments have grappled with whether, and to what extent, to regulate individuals' purchase, possession, and carrying of firearms. This Information Memorandum provides a Wisconsin-specific overview of this area of law. First, it introduces background concepts regarding legal restraints on regulation, including relevant constitutional provisions and the general preemption of local regulation in Wisconsin. Next, it summarizes state and federal possession laws and background check requirements. It then provides an overview of certain prohibitions and penalties related to possession laws, including prohibitions against straw purchases. That summary is followed by an overview of restrictions on carrying firearms and requirements for carrying a concealed weapon. It concludes with a brief introduction to regulations regarding certain types of devices that have received special attention.

CONSTITUTIONAL FRAMEWORK AND AUTHORITY TO REGULATE

THE SECOND AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE I, SECTION 25, OF THE WISCONSIN CONSTITUTION

The Second Amendment to the U.S. Constitution protects the right of the people to keep and bear arms and provides the legal backdrop for restrictions imposed on purchasing, possessing, and carrying of firearms. The Amendment states:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.

Likewise, the Wisconsin Constitution specifies that the people have the right to keep and bear arms for security, defense, hunting, recreation, or any other lawful purpose. [Art. I, s. 25, Wis. Const.]

The U.S. Supreme Court refined the meaning and protections afforded by the Second Amendment in several landmark opinions issued in the last 10 years. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court held that the Second Amendment protects an individual's right to possess a firearm and to use that firearm for lawful purposes such as self-defense. The Court then struck down as unconstitutional a District of Columbia ban on handgun possession and a requirement that firearms in a home be kept disassembled or trigger-locked.

Two years later, in *McDonald v. City of Chicago*, 561 U.S. 3025 (2010), the Court held that the Second Amendment protects individuals against actions by state and local governments, in addition to protecting them against actions by the federal government.¹ The Court then struck down a Chicago ordinance that effectively banned handgun possession by most city residents.

Although these cases confirmed individual rights and struck down particular firearms restrictions, the Supreme Court did not conclude that all firearm regulations are unconstitutional. The Court noted that the right secured by the Second Amendment “is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” [*Heller*, 554 U.S. at 626.] The Court further stated that its opinion does not undermine longstanding prohibitions such as possession of firearms by felons, or laws prohibiting carrying of firearms in sensitive places like schools or imposing conditions and qualifications on commercial sales of arms. [*Id.* at 626-27.] Similarly, the Wisconsin Supreme Court has held that a state firearms statute is constitutional if the regulation constitutes a “reasonable regulation in light of the state’s police powers.” [*State v. Cole*, 2003 WI 112 at ¶ 22.]

LOCAL REGULATION GENERALLY PREEMPTED

Local units of government, such as cities, villages, towns, and counties, have a very limited role regarding firearms regulation in Wisconsin. With a few narrow exceptions, state law prohibits cities, villages, towns, and counties from enacting ordinances regulating the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration, or taxation of any knife, firearm, or ammunition, unless the ordinance is the same as or less stringent than state law. However, cities, villages, and towns that exercise village powers generally may enact ordinances that restrict the discharge of a firearm. [s. 66.0409 (2), Stats.]

PERSONS PROHIBITED FROM POSSESSING A FIREARM

Both state and federal law prohibit certain persons from possessing a firearm.² Although there is substantial overlap between state and federal law with respect to who is prohibited from possessing a firearm, the categories of persons prohibited under state and federal law are not identical. Where the state and federal firearm possession laws differ, the more restrictive law is controlling in Wisconsin.

¹ The Court interpreted the Fourteenth Amendment to the U.S. Constitution, which explicitly applies to the states, as having incorporated the Second Amendment.

² Federal law defines a “firearm” to mean any of the following: (1) any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; (2) the frame or receiver of any such weapon; (3) any firearm muffler or firearm silencer; or (4) any “destructive device,” defined to include certain explosive devices and weapons. The federal definition of “firearm” specifically excludes antique firearms, including muzzleloading rifles. [18 U.S.C. s. 921 (a) (3).] For purposes of the state possession law, Wisconsin courts have interpreted “firearm” to mean a weapon that acts by force of gunpowder to fire a projectile, including such a weapon in its disassembled state. [*State v. Rardon*, 518 N.W.2d 330 (Ct. App. 1994); see also s. 167.31 (1) (c), Stats.]

Disqualification Based on Acts that Constitute Felonies

Wisconsin law prohibits a person from possessing a firearm if any of the following applies:

- The person has been convicted of a felony in this state.
- The person has been convicted of a crime elsewhere that would be a felony if committed in this state.
- The person has been adjudicated delinquent for an act that would be a felony if committed by an adult in this state.
- The person has been found not guilty of a felony in this state by reason of mental disease or defect.
- The person has been found not guilty of, or not responsible for, a crime elsewhere that would be a felony in this state by reason of insanity or mental disease, defect, or illness.

[s. 941.29 (1m), Stats.]

As under Wisconsin law, a person who has been convicted of a felony is prohibited from possessing a firearm under federal law. Federal law also prohibits a person who is a fugitive from justice from possessing a firearm. Additionally, federal law prohibits a person who has been convicted of a misdemeanor crime of domestic violence from possessing a firearm. [18 U.S.C. s. 922 (g) (1), (2), and (9).]

Disqualification Based on Court Order Relating to Mental Health or Addiction

Wisconsin law also prohibits persons subject to certain types of court orders related to mental health and addiction from possessing a firearm. A person is prohibited from possessing a firearm if any of the following apply and the court determines federal law prohibits the person from possessing a firearm:

- The person was involuntarily committed for mental illness, drug dependence, or alcohol dependence under ch. 51, Stats.
- The person was adjudicated incompetent by a court in a guardianship proceeding under ch. 54, Stats.
- The person was ordered into protective placement or was receiving protective services when determined to be incompetent due to a developmental disability, degenerative brain disorder, or serious and persistent mental illness under ch. 55, Stats.

[s. 941.29 (1m) (e) and (em), Stats.]

All three types of orders listed above follow court proceedings, including a hearing. In conjunction with these orders, a court must also order an individual not to possess a firearm if the court determines the individual is prohibited from possessing a firearm under federal law, and must order the seizure of any firearm owned by the individual. [ss. 51.20 (13) (cv) 1., 51.45

(13) (i) 1., 54.10 (3) (f) 1., and 55.12 (10) (a), Stats.] Generally, those restrictions remain in effect even after the corresponding order is no longer in effect. However, a person may petition a court to have the firearms order cancelled. [ss. 51.20 (13) (cv) 1m., 51.45 (13) (i) 2., 54.10 (3) (f) 2., and 55.12 (10) (b), Stats.]

Under federal law, a person is prohibited from possessing a firearm or ammunition if he or she is an unlawful user of or addicted to any controlled substance. Federal law also prohibits firearm possession by any person who has been adjudicated as a “mental defective” or committed to a mental institution. [18 U.S.C. s. 922 (g) (3) and (4).]

Disqualification Based on Restraining Order or Injunction

Wisconsin law also prohibits the possession of firearms by individuals who are subject to certain court orders relating to abuse or harassment (sometimes referred to as “restraining orders”). Wisconsin law provides a process for a person to petition a court for an order that requires another person to refrain from certain acts against the petitioner. Obtaining one of these orders is a two-part procedure: the first step involves a petition for a temporary restraining order (TRO); the second step is to hold a hearing to determine whether to issue an injunction, which is the “final relief” in such actions. The four types of TROs and injunctions that are authorized under Wisconsin law are: domestic abuse; child abuse; individual-at-risk; and harassment. [ss. 813.12, 813.122, 813.123, and 813.125, Stats.]

A person who is subject to a domestic abuse or child abuse injunction is prohibited from possessing a firearm. [s. 941.29 (1) (f), Stats.] A person who is subject to an individual-at-risk or harassment injunction is also prohibited from possessing a firearm if ordered not to possess a firearm by the injunction. [s. 941.29 1 (g), Stats.] A court must order a person subject to an injunction and prohibited from possessing a firearm to surrender any firearms that he or she owns or has in his or her possession to a county sheriff or other person approved by the court. [ss. 813.12 (4m), 813.122 (5m), 813.123 (5m), and 813.125 (4m), Stats.]

As under Wisconsin law, federal law prohibits a person from possessing a firearm if the person is subject to certain types of restraining orders. However, the circumstances under which a person who is subject to a restraining order is prohibited from possessing a firearm under federal law differ somewhat from those under Wisconsin law.

Under federal law, a person is prohibited from possessing a firearm if he or she is subject to a court order, issued after a hearing, to which all of the following apply:

- The order restrains the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
- The order includes a finding that the person to whom the order applies represents a credible threat to the physical safety of his or her intimate partner or the partner’s child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the person’s intimate partner or child that would reasonably be expected to cause bodily injury.

[18 U.S.C. s. 922 (g) (8).]

Because the federal prohibition applies only to restraining orders that meet the above criteria, it applies to some, but not all, individuals subject to a restraining order in Wisconsin. For example, an injunction issued by a Wisconsin court that does not involve an intimate partner or intimate partner's child would not fall within the scope of the federal restriction.

Disqualification Based on Age

Under federal law, with certain exceptions, a person under age 18 is generally prohibited from possessing a handgun. [18 U.S.C. s. 922 (x) (2).] Under Wisconsin law, with certain exceptions for hunting, military service, and target practice, a person under age 18 is generally prohibited from possessing or going armed with a firearm. Also, as discussed below, a person must be 21 years of age or older to be eligible for a state license to carry a concealed weapon. [ss. 29.304 and 948.60, Stats.]

Disqualification Based on Alien Status, Renunciation of Citizenship, or Dishonorable Discharge

Finally, federal law prohibits possession by certain aliens, people who have renounced their U.S. citizenship, and persons who were dishonorably discharged from the Armed Forces. [18 U.S.C. s. 922 (g) (5), (6), and (7).]

BACKGROUND CHECK REQUIREMENTS

A background check is required under two circumstances: (1) to purchase a firearm from a federal firearms licensed dealer (FFL); and (2) to apply for a license to carry a concealed weapon in Wisconsin (CCW). The purpose of a background check is to determine whether a person is ineligible to possess a firearm for any of the reasons described above.

Federal law requires that a background check be conducted when a person purchases a firearm through an FFL. [18 U.S.C. s. 922 (t).] Similarly, state law prohibits an FFL from transferring possession of a handgun until a successful background check has been completed. [s. 175.35 (2), Stats.] A person must become licensed as an FFL if he or she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business, with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A person is exempt from the federal licensing requirement if he or she makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby. [18 U.S.C. s. 921 (a) (21) (C).]

Background check procedures for purchasing a firearm vary depending on whether the firearm purchased is a handgun or long gun. Background checks for transfers of handguns are conducted through the state Department of Justice (DOJ) Handgun Hotline. Background checks for transfers of long guns are conducted through the National Instant Criminal Background Check System in the Federal Bureau of Investigation. The background check that is required for a CCW license is conducted by DOJ's Handgun Hotline.

A background check is not required under state or federal law for sales or transfers from sellers who are not FFLs, including sales or transfers between persons who are not FFLs at an event that is organized for the purposes of buying and selling firearms, e.g., a "gun show." However, as

noted above, an FFL must comply with the state and federal background check requirements regardless of where the sale takes place.

PENALTIES FOR KNOWINGLY TRANSFERRING A FIREARM TO AN INELIGIBLE PERSON OR PROVIDING FALSE INFORMATION

A person who provides false information when purchasing a firearm or transfers a firearm to a person who is prohibited from possessing a firearm may be subject to criminal penalties under state and federal law. In some circumstances, either of these activities could be referred to as a “straw purchase,” which occurs when a person acquires a firearm for a person who is prohibited from possessing a firearm.

TRANSFERRING A FIREARM

With certain exceptions, Wisconsin law, as affected by 2017 Wisconsin Act 145, prohibits intentionally furnishing, purchasing, or possessing a firearm for a person, knowing that the person is prohibited from possessing a firearm under state law. Doing so is a violation of the crime of straw purchasing of firearms, and is punishable as a Class G felony.³ [s. 941.2905, Stats.]

Federal law prohibits an FFL from selling or delivering a firearm to a person who the FFL has reasonable cause to believe is ineligible to possess a firearm because of age, or is ineligible to possess or purchase a firearm under state law. [18 U.S.C. s. 922 (b) (1) and (2).]

PROVIDING FALSE INFORMATION

Under Wisconsin law, as affected by 2017 Wisconsin Act 145, a person who intentionally provides false information to an FFL during a handgun purchase is subject to a fine of \$500 to \$10,000 and imprisonment of up to nine months. A person who provides such false information with the purpose or intent to transfer the firearm to a person who the person knows is ineligible to possess a firearm under state or federal law is guilty of a Class H felony.⁴ [s. 175.35 (2e) and (3), Stats.]

Federal law provides penalties for knowingly making a false or fictitious oral or written statement, including a false statement that the purchaser is the actual buyer of the firearm, or furnishing or exhibiting false, fictitious, or misrepresented identification that is intended or likely to deceive an FFL with respect to the lawfulness of a firearm sale.⁵ [18 U.S.C. s. 922 (a) (6).]

³ The penalty for a Class G felony is a fine of up to \$25,000 and imprisonment of up to six years, or both. [s. 939.50 (3) (g), Stats.]

⁴ The penalty for a Class H felony is a fine of up to \$10,000 and imprisonment of up to six years, or both. [s. 939.50 (3) (h), Stats.] For purposes of this prohibition, the fine impose must not be less than \$500.

⁵ A violation of that prohibition is punishable by a fine and imprisonment of up to 10 years, or both. [18 U.S.C. s. 924 (a) (2).]

GEOGRAPHIC RESTRICTIONS ON CARRYING A FIREARM

TRESPASS STATUTE

The state trespass statute provides that a person who enters specified types of property while carrying a firearm is subject to a Class B forfeiture.⁶ The types of property include:

- A residence that the person does not own or occupy, if the owner or occupant of the residence has notified the person not to enter or remain at the residence while carrying a firearm.
- Nonresidential buildings and grounds, and other land that the person does not own or occupy, if the owner or occupant of the building, grounds, or land has notified the person not to enter or remain in or on the relevant part of the building, grounds, or land while carrying a firearm.
- Special event grounds, if the organizers of the special event have notified the person not to enter or remain at the special event while carrying a firearm.
- Any part of a building that is owned, occupied, or controlled by the state or any local governmental unit, if the state or local governmental unit has notified the person not to enter or remain in the building while carrying a firearm.
- Any privately or publicly owned building on the grounds of a university or college, if the university or college has notified the person not to enter or remain in the building while carrying a firearm.

[s. 943.13 (1m) (c), Stats.]

For most nonresidential property, the notification requirement is satisfied if the property owner or occupant has posted a sign or signs in prominent places near all entrances to the part of the building to which the restriction applies, such that any individual entering the building may be reasonably expected to see a sign.⁷ Such signs must be at least five by seven inches. [s. 943.13 (2) (bm), Stats.]

GUN-FREE SCHOOL ZONES

State and federal gun-free school zones laws generally prohibit the possession of firearms in school buildings, on the grounds of a school, and within 1,000 feet of the grounds of a school (a “school zone”). [s. 948.605, Stats.; and 18 U.S.C. s. 922 (q) (2).] Under Wisconsin law, a person who knowingly possesses a firearm at a place that the person knows, or has reasonable cause to believe, is in or on the grounds of a school is subject to a Class I felony.⁸ Any person who is not

⁶ The penalty for a Class B forfeiture is a forfeiture of up to \$1,000. [s. 939.52 (3) (b), Stats.]

⁷ For certain other types of property, including residential property, notification may occur orally.

⁸ The penalty for a Class I felony is a fine of up to \$10,000 and imprisonment up to three and a half years, or both. [s. 939.50 (3) (i), Stats.]

a CCW license holder who knowingly possesses a firearm at a place that the person knows, or has reasonable cause to believe, is within 1,000 feet of the grounds of a school is subject to a Class B forfeiture. [s. 948.605 (2) (a), Stats.]

Exceptions to the state gun-free school zones law include possession of unloaded and encased firearms, possession of a firearm for use in a school-approved program, possession under a contract with the school, possession by law enforcement officers, possession while legally hunting in a school forest, and possession on private property that is not part of school grounds. In addition, a person who holds a CCW license, discussed below, may possess a firearm within 1,000 feet of school grounds, but not on school grounds or inside a school, unless one of the other exceptions applies. [s. 948.605 (2) (b), Stats.]

The federal gun-free school zones law contains similar exceptions, with some differences. For instance, the federal prohibition does not apply to individuals who possess firearms pursuant to a license issued by the state in which the school zone is located if the law enforcement authorities of the state (or a political subdivision of the state) verify that the individual is qualified under law to receive the license. [18 U.S.C. s. 922 (q) (2).] In effect, that exception authorizes a person who holds a state CCW license to possess firearms on school grounds under federal law. (However, as mentioned above, state law prohibits CCW license holders from possessing a firearm on school grounds unless one of the other state exceptions applies.) Also, the parallel exemption under federal law for an unloaded firearm requires the firearm to be in a locked case, while state law only requires an unloaded firearm to be encased.

Where the state and federal exceptions differ, the more stringent exception applies. In addition, an exception under the gun-free school zones laws does not overcome a restriction under the trespass statute, discussed above. For example, although the gun-free school zones laws provide an exception for carrying an unloaded firearm in a locked container, a person may not carry the firearm into a school building on which signs have been posted pursuant to the trespass statute.

FIREARMS IN VEHICLES

Under Wisconsin law, a person may transport a handgun in a vehicle, and the handgun may be loaded. A person may also transport a long gun in a vehicle, but the long gun cannot be loaded. [s. 167.31 (2) (b) 1., Stats.] To transport a concealed handgun in a vehicle, a person must have a Wisconsin or out-of-state CCW license, described below. [s. 175.60 (2g) (a), Stats.]

For purposes of what may be considered “concealed,” the Wisconsin Court of Appeals has articulated a test for what constitutes going armed with a concealed weapon within a vehicle. Under that test, a person is carrying a concealed weapon in a vehicle if: (1) the weapon is inside the vehicle and is within the person’s reach; (2) the person is aware of the presence of the weapon; and (3) the weapon is concealed, or is hidden from ordinary view.⁹ Accordingly, under

⁹ The court interpreted the term “concealed” broadly with respect to firearms in vehicles, holding that a firearm in a vehicle is concealed if it is indiscernible from the ordinary observation of a person located **outside** and within the immediate vicinity of the vehicle. [*State v. Walls*, 190 Wis. 2d 65, 71-73 (Ct. App. 1994).]

current case law, a person may have a handgun that is out of arm's reach within a vehicle, even if the person does not have a CCW license.

Other restrictions apply to various types of vehicles, such as boats, all-terrain vehicles, and airplanes. [See, e.g., ss. 23.33 (3c) and 167.31 Stats.]

LOCAL RESTRICTIONS REGARDING CARRYING ON PUBLIC TRANSPORTATION

In *Wisconsin Carry, Inc. v. City of Madison*, 2017 WI 19, the Wisconsin Supreme Court struck down a rule prohibiting certain weapons on city buses. The City of Madison's Transit and Parking Commission had adopted a rule prohibiting passengers on Metro Transit's buses from bringing any items of a dangerous nature onboard buses, including "pistols, rifles, knives or swords." The Court held that the city's rule was prohibited under s. 66.0409 (2), Stats., which generally preempts local ordinances and resolutions regulating knives and firearms.

INTERSTATE TRAVEL

Many states and local governments have restrictions that may apply to a person traveling with a firearm across state lines. A provision in the federal Firearms Owners' Protection Act, commonly referred to as the "Safe Passage" provision, provides protection notwithstanding any state or local restriction in certain circumstances.

Under the Safe Passage provision, a person may not be prohibited from traveling with a firearm for a lawful purpose from one place where he or she may legally possess and carry the firearm to any destination where he or she may legally possess and carry the firearm, notwithstanding any state or local law, if: (1) the firearm is unloaded during transport; and (2) neither the firearm nor any ammunition being transported is readily or directly accessible from the passenger compartment of the vehicle. For example, an unloaded firearm may be transported in a trunk. If the vehicle does not have a trunk, the firearm or ammunition must be contained in a locked container other than the glove compartment or console. [18 U.S.C. s. 926A.]

Various jurisdictions have interpreted the Safe Passage provision differently. For example, some jurisdictions interpret the provision to be an affirmative defense, which may only be raised after a person has been arrested.¹⁰

CONCEALED CARRY LICENSE

Wisconsin law generally prohibits any person from carrying¹¹ a concealed and dangerous weapon. However, Wisconsin law provides a general exception to that prohibition for persons

¹⁰ Because state and local governments interpret the federal Safe Passage provision differently, some advocacy organizations suggest researching state laws in each state through which the person will travel and traveling with various documents, such as: (1) any applicable firearm license or permit on hand; (2) a copy of the federal Safe Passage provision discussed above; and (3) a copies of the jurisdictions' relevant publications or websites documenting the provisions of law or reciprocity information. [See, e.g., *Guide to the Interstate Transportation of Firearms*, National Rifle Association-Institute for Legislative Action (January 1, 2015) available at: [https://www.nraila.org/articles/20150101/guide-to-the-interstate-transportation.](https://www.nraila.org/articles/20150101/guide-to-the-interstate-transportation)]

¹¹ "Carrying" a firearm means to "go armed with" a firearm. [s. 175.60 (1) (ag), Stats.] Wisconsin courts have interpreted "go armed with" to mean that the firearm was on the individual's person or was within the individual's

who obtain a CCW license from the state, or who are licensed by another state that is recognized as having a comparable background check for concealed carry approval.¹² [ss. 165.25 (16) and 941.23 (2), Stats.]

DOJ must issue a CCW license to an applicant who pays the applicable fees and meets the following requirements:

- The applicant is at least 21 years old.
- The applicant is not prohibited from possessing a firearm or a dangerous weapon under state or federal law or by court order.
- The applicant is a Wisconsin resident.
- The applicant completes firearms training.
- The applicant passes a background check.

A CCW license allows a person to carry a concealed weapon, defined as a handgun, an electric weapon, or a billy club. In certain types of locations, identified in the statutes, concealed carry is not permitted. A license is valid for five years and may be renewed. [s. 175.60, Stats.]

REGULATION OF CERTAIN DEVICES

Certain devices, including semiautomatic weapons, bump stocks, armor-piercing bullets, and silencers, have been a subject of legislative interest. State and federal law regarding those devices is summarized below.

“ASSAULT WEAPONS”

The term “assault weapon” does not currently appear in the Wisconsin Statutes, nor is it a defined term in United States Code. Typically, the term refers to semiautomatic, military style weapons, with high capacity magazines.¹³ These types of firearms may be obtained in Wisconsin in the same manner as any other firearm.¹⁴

reach and the individual was aware of the presence of the firearm. However, Wisconsin courts generally do not treat having an unloaded and encased firearm within one’s reach as “going armed with” the firearm. [See, e.g., *State v. Walls*, 190 Wis. 2d 65 (Ct. App. 1994).]

¹² DOJ maintains a list of out-of-state licenses for which reciprocity is recognized in Wisconsin. The list is available at: www.doj.state.wi.us.

¹³ Under federal law, “semiautomatic rifle” means “any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.” [18 U.S.C. s. 921 (a) (28).]

¹⁴ The federal Public Safety and Recreational Firearms Use Protection Act, often referred to as the federal “assault weapons ban,” prohibited the possession, manufacture, and transfer of certain semiautomatic weapons during a 10-year period, from 1994 to 2004.

The term “assault weapon” also sometimes refers to fully automatic firearms. Fully automatic weapons are regulated at both the federal and state level. Wisconsin law generally prohibits the sale, possession, use, or transportation of any machinegun or other fully automatic firearm, subject to exceptions for law enforcement, military personnel, and licensed collectors. [s. 941.26 (1g) and (3), Stats.] Under federal law, the purchase of a machinegun,¹⁵ submachinegun, fully automatic rifle, short-barreled shotgun or rifle, or other “destructive device” such as a hand grenade, is generally subject to a \$200 transfer tax, certification by local law enforcement, and registration of the weapon. These weapons are sometimes referred to as “Title II firearms,” from Title II of the Gun Control Act of 1968, although that Act modified the law that was already in place under the National Firearms Act of 1934.¹⁶ [26 U.S.C. ss. 5811 (a), 5812, and 5841.]

BUMP STOCKS

A “bump stock” (also called a “bump fire stock”) allows a semiautomatic weapon to fire in a rapid manner that is comparable to a fully automatic weapon. During the past 10 years, ATF has generally taken the position that bump stock devices do not constitute “machinegun conversion devices” under federal law, and thus do not have the effect of converting semiautomatic weapons into fully automatic weapons (machineguns). However, ATF recently published an advance notice of proposed rulemaking, in which it proposes to formally interpret the statutory definition of “machinegun,” for the stated purpose of clarifying whether a firearm with a bump stock falls within that definition. [82 Fed. Reg. 60929.] If ATF modifies its current interpretation, bump stocks could become regulated devices under state and federal law.

ARMOR-PIERCING AMMUNITION

Federal law prohibits the manufacture, sale, import, or delivery of armor-piercing ammunition, subject to limited exceptions. [18 U.S.C. s. 922 (a) (7) and (8).] Federal law also generally prohibits an FFL from willfully transferring armor-piercing ammunition. [27 C.F.R. s. 478.99 (e).] Under Wisconsin law, it is a Class H felony to use or possess a handgun during the commission of a crime if: (1) the handgun is loaded with an armor-piercing bullet or a projectile or projectile core that may be fired from the handgun with a muzzle velocity of 1,500 feet per second or greater; or (2) the person possesses an armor-piercing bullet capable of being fired from the handgun. [s. 941.296, Stats.]

SILENCERS

Under Wisconsin law, it is generally a Class H felony to sell, deliver, or possess a firearm silencer. However, an exception exempts from this prohibition “any person who has complied with the

¹⁵ Federal law defines “machinegun” to mean any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term also includes the frame or receiver of any such weapon and any part designed and intended solely and exclusively for use in converting a weapon into a machinegun. [26 U.S.C. s. 5845 (b).]

¹⁶ Unless a person furnishes false information, information in the registration of a Title II firearm cannot be used as evidence in a criminal proceeding. [26 U.S.C. s. 5848.] For more detailed information on the application process and other requirements for a Title II firearm, see the National Firearms Act Handbook, by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), available at: www.atf.gov/firearms.

licensing and registration requirements under [federal law].” This allows a person to possess and use a firearm with a silencer if the person goes through the Title II registration process, described above. There are also exceptions for law enforcement and military personnel. [s. 941.298, Stats.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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