



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

December 5, 2005

TO: Members  
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Summary of Joint Committee on Finance Modifications to Assembly Bill 763 and to Senate Bill 403 Relating to Authorizing Individuals to Carry Certain Concealed Weapons

Assembly Bill 763 (AB 763) and Senate Bill 403 (SB 403) are companion bills which would modify current law prohibitions on carrying a concealed weapon to authorize certain individuals to carry specified types of concealed weapons. On November 8, 2005, the Assembly Committee on Criminal Justice and Homeland Security adopted Assembly Substitute Amendment 1 (ASA 1) to AB 763. On November 10, 2005, the Senate Committee on Judiciary, Corrections and Privacy adopted Senate Substitute Amendment 1 (SSA 1) to SB 403. The provisions of both substitute amendments were identical and both proposals were referred to the Joint Committee on Finance.

On November 30, 2005, the Joint Committee on Finance adopted four amendments to both ASA 1 to AB 763 and SSA 1 to SB 403. All of the Joint Committee on Finance modifications were subsequently adopted, respectively, as Assembly Substitute Amendment 2 (ASA 2) to AB 763 and as Senate Substitute Amendment 2 (SSA 2) to SB 403, on votes of 14-0. The bills, as amended by ASA 2 and by SSA 2, were recommended for passage, on votes of 12-2.

This memorandum summarizes the changes to ASA 1 to AB 763 and to SSA 1 to SB 403 adopted by the Joint Committee on Finance and incorporated into ASA 2 to AB 763 and SSA 2 to SB 403.

### **Additional Eligibility Requirement for Licensure for Private Citizens (Non-Law Enforcement Personnel)**

Under both ASA 2 to AB 763 and SSA 2 to SB 403, an individual would be ineligible for licensure if the person had been convicted of a misdemeanor stalking violation under state law, or a

misdemeanor violation of a federal law, or a law of another state comparable to the state misdemeanor stalking violation.

### **Modification of the Misdemeanor Crime of Violence Eligibility Requirement for Licensure for Private Citizens**

Under both ASA 1 to AB 763 and SSA 1 to SB 403, an individual would be ineligible for a concealed weapons license if, within the preceding three years, the person was convicted of a misdemeanor crime of violence *and* was serving a sentence, was on probation, or was subject to a dispositional order under Wisconsin's Juvenile Justice Code for such a crime.

Under both ASA 2 to AB 763 and SSA 2 to SB 403, an individual would now be ineligible for a concealed weapons license if, within the preceding three years, the individual was either convicted of a misdemeanor crime of violence, *or* was serving a sentence, was on probation, or was subject to a dispositional order under Wisconsin's Juvenile Justice Code for such a crime.

### **Additional Places in Which Wisconsin or Out-of-State Licensees (Non-Law Enforcement Personnel) Would Be Prohibited from Carrying a Concealed Weapon**

Under both ASA 2 to AB 763 and SSA 2 to SB 403, licensees and out-of-state licensees would be prohibited from carrying concealed weapons at the following additional places:

- At a place at which an organized youth sporting event is taking place.
- In 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.
- In a child care center licensed under state law, unless the licensee or out-of-state licensee was the owner of the child care center or, if the child care center was located in a residence, the licensee or out-of-state licensee resided at the residence. [State law provides that no person may for compensation provide care and supervision for four or more children under the age of seven for less than 24 hours a day unless that person obtains a license to operate a day care center. This licensure requirement does not apply to: (1) a relative or guardian of a child who provides care and supervision for the child; (2) a public or parochial school; (3) a person employed to come to the home of the child's parent or guardian for less than 24 hours a day; or (4) a county, city, village, town, school district or library that provides programs primarily intended for recreational or social purposes.]
- At a health-related facility, except that the director of any such facility, or his or her authorized representative, could authorize a licensee or out-of-state licensee to carry a concealed weapon in the facility. A health-related facility would include: (1) a health care facility, as defined

under state law; (2) a clinic or office used by a licensed physician; (3) an adult family home, as defined under state law; (4) a residential care apartment complex as defined under state law; (5) a facility as defined under state law; and (6) a home health agency as defined under state law. [The definition of health care facility under state law covers hospitals, mental health hospitals, nursing homes, community-based residential facilities, state veterans homes, state mental health clinics, state centers for the developmentally disabled, the UW Hospitals and Clinics, infirmaries, and local health department dispensaries for treating tuberculosis. The definition of facility under state law means a nursing home or community-based residential facility, while the definition of home health agency means an organization that primarily provides skilled nursing and other therapeutic services.]

- In a building located in a building

- In a building owned by a nonprofit organization, whose primary function is to provide direct services to children or families, in or at which the organization provides such direct services.

ge; (2) chancellor of a four-year University of Wisconsin campus; (3) dean of a college campus; or (4) director of a technical college district.

- In a building or part of a building that is used for religious worship or another religious purpose, unless the owner of the building or an authorized representative of the owner authorizes the licensee or out-of-state licensee to carry a concealed weapon in the building or part of the building.

- In a building owned by a nonprofit organization, whose primary function is to provide direct services to children or families, in or at which the organization provides such direct services.

**Prohibiting Licensees or Out-of-State Licensees from Carrying Concealed While under the Influence of an Intoxicant**

Under both ASA 1 to AB 763 and SSA 1 to SB 403, a licensee or out-of-state licensee would be prohibited from carrying a concealed weapon if the person's alcohol concentration exceeded 0.08.

Under both ASA 2 to AB 763 and SSA 2 to SB 403, a licensee or out-of-state licensee would now also be prohibited from carrying a concealed weapon if the person was under the influence of an intoxicant to a degree which materially impaired his or her ability to handle the weapon. If an individual was charged with violating both of these provisions, the offenses would be joined.

Both ASA 2 and SSA 2 further specify that each of these two types of criminal cases would require proof of a fact for conviction which the other does not require. Under the first case, a

prosecutor would have to establish that an individual carried a concealed weapon while the person's alcohol concentration exceeded 0.08. Under the second case, a prosecutor would have to establish that an individual carried a concealed weapon while the person was under the influence of an intoxicant to a degree which materially impaired his or her ability to handle the weapon.

### **Disqualification from Licensure Petitions Regarding Certain Misdemeanants**

Both ASA 2 to AB 763 and SSA 2 to SB 403 would newly provide that if the Department of Justice (DOJ) received an application for a concealed weapons license from a person who had committed a misdemeanor crime of violence, but the individual would nonetheless qualify for licensure because the person was beyond the term of the three-year disqualification look-back period, DOJ would be authorized to file a petition asking a circuit court to enter an order barring the person from receiving a license. The petition would have to allege that the person would pose a substantial risk to others if the person were granted a concealed weapons license.

The Department would be required to file the petition in the circuit court of the person's county of residence. The Department could not file the petition more than 30 days after receiving the person's completed application unless the person had been issued an emergency license. The court would be required to allow the affected individual 30 days to file an answer to the petition.

The court would be authorized to hold an evidentiary hearing on the petition. If the court determined, by clear and convincing evidence, that the person would pose a substantial risk to others if the person were granted a concealed weapons license, the court would be required to enter an order prohibiting the person from obtaining a license. If the court denied DOJ's petition, the court would be required to award the affected individual costs and reasonable attorney fees. Finally, the court would be required to expedite any such proceeding brought before it.

DOJ would be required to promulgate administrative rules specifying a procedure by which the Department could file a disqualification petition regarding certain misdemeanants in order to permit license revocation with respect to a person issued an emergency license where the person, as a result of being licensed, poses a substantial risk to others. The Department would be required to promulgate such rules as emergency rules until the permanent rules were promulgated. The Department would not be required to provide evidence that these emergency rules would be necessary for the preservation of public peace, health, safety, or welfare and would not be required to provide a finding of an emergency. This provision would take effect on the day after publication of the legislation.

### **Providing Licensee Information to Law Enforcement Agencies through the Department of Transportation**

Under both ASA 2 to AB 763 and SSA 2 to SB 403, applications and renewal applications for a concealed weapons license would require the applicant to provide the registration number for each motor vehicle registered in the applicant's name. DOJ would be required to notify the Department of Transportation (DOT) of an individual's name, date of birth, and sex, the date on which the individual was last issued a concealed weapons license by DOJ, and any vehicle registration number provided by the individual on his or her concealed weapons license application if: (1) the person was issued a concealed weapons license; (2) the person's concealed weapons license was renewed; (3) the person's concealed weapons license expired and was not renewed; (4) the person's concealed weapons license was suspended or revoked; or (5) the person's suspended concealed weapons license was reinstated.

The Department of Transportation, in consultation with DOJ, would be required to promulgate rules specifying how it would obtain the vehicle registration number for a concealed weapons licensee if there was no motor vehicle registered to the individual when he or she became a licensee.

Utilizing information provided by DOJ and obtained by DOT through the procedures developed by administrative rule, the Department of Transportation would be required to maintain a record of each vehicle owner who is a concealed weapons licensee. If DOT records indicated that an owner of a vehicle was a concealed weapons licensee, DOT would be required, in its registration records for that vehicle, to include a confidential entry that informed a law enforcement officer who requested information regarding that vehicle that the owner was a concealed weapons licensee.

A law enforcement officer could request information maintained by DOT regarding concealed weapons licensees only if he or she was conducting a lawful vehicle stop under Wisconsin law. Neither DOT nor any of its employees could: (1) make concealed weapons licensee information maintained by DOT available to the public; or (2) store, maintain, format, sort, or access information regarding concealed weapons licensees based on their status as concealed weapons licensees. Any individual violating these provisions could be fined not more than \$500 or sentenced to a term of imprisonment of not more than 30 days or both.

### **Providing Licensee Information to Law Enforcement Agencies through the Department of Justice**

Under both ASA 1 to AB 763 and SSA 1 to SB 403, DOJ would be required to provide information concerning a specific licensee to a law enforcement agency, but only if the agency was requesting the information for any of the following purposes: (1) to confirm the validity of a license produced by an individual at the request of a law enforcement officer; (2) to confirm that an individual holds a valid concealed weapons license in a situation where the individual was armed with a concealed weapon, was not carrying the required license, but claimed to hold one; or (3) to investigate whether an individual submitted an intentionally false notarized statement in his or her concealed weapons license application, intentionally violated the requirement to provide updated

information to DOJ within 10 days after being charged under federal law or the law of another state with any crime or any drunken driving offense, or intentionally made a false statement to DOJ in connection with the individual's request for an emergency concealed weapons license.

Under both ASA 2 to AB 763 and SSA 2 to SB 403, neither a law enforcement agency nor any of its employees could: (1) make information regarding a concealed weapons licensee that was obtained either from DOJ or DOT available to the public except in the context of a prosecution for an offense in which the individual's status as a concealed weapons licensee was relevant; (2) store or maintain information regarding a concealed weapons licensee that was obtained either from DOJ or DOT based on the individual's status as a concealed weapons licensee; or (3) sort or access information regarding vehicle stops, investigations, civil or criminal offenses, or other activities involving the agency based on the status as concealed weapons licensees of any individuals involved.

Any individual violating these provisions could be fined not more \$500 or sentenced to a term of imprisonment of not more than 30 days or both.

### **Providing Licensee Information to Department of Justice Law Enforcement Officers**

Like other law enforcement officers, a DOJ-employed law enforcement officer could obtain information regarding a concealed weapons licensee from DOT only if he or she was conducting a lawful vehicle stop under Wisconsin law.

Under both ASA 1 to AB 763 and SSA 1 to SB 403, DOJ would be required to maintain a computerized record listing the names of all individuals issued a concealed weapons license along with the following information on all licensees: (1) the full name, date of birth, and residence address of the licensee; (2) a physical description of the licensee, including sex, height, weight, and hair and eye color; (3) the date on which the license was issued; (4) the date on which the license expires; and (5) a unique identification number for each licensee. The Department would be prohibited from storing, maintaining, formatting, sorting, or accessing this information in any other way other than by the name, date of birth, or gender of the licensee or the identification number assigned to the licensee.

Under both ASA 2 to AB 763 and SSA 2 to SB 403, a law enforcement officer employed by DOJ could neither request nor be provided information maintained by the Department concerning a specific concealed weapons licensee except for one of the following purposes: (1) to confirm the validity of a license produced by an individual at the request of a law enforcement officer; (2) to confirm that an individual holds a valid concealed weapons license in a situation where the individual was armed with a concealed weapon, was not carrying the required license, but claimed to hold one; (3) to investigate whether an individual submitted an intentionally false notarized statement in his or her concealed weapons license application, intentionally violated the requirement to provide updated information to 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 made a false statement to the Department in connection with the individual's request for an emergency concealed weapons license; (4) to investigate whether an individual complied with the requirement to provide updated information to DOJ regarding out-of-state or federal criminal or drunk driving charges; or (5) to investigate whether an individual delivered a concealed weapons license document to DOJ following a departmental notice of license suspension or revocation.

Any individual violating these provisions could be fined not more than \$500 or sentenced to a term of imprisonment of not more than 30 days or both.

While concealed weapons licensee information would generally not be available to the public, both ASA 2 to AB 763 and SSA 2 to SB 403 would provide that in addition to the annual report to the Legislature and to the Governor, this information could also be made available to the public in the context of a prosecution for an offense in which the person's status as a licensee is relevant and in the context of a misdemeanor crime of violence disqualification petition.

### **Excessive Force by Law Enforcement Officers Against Concealed Weapons Licensees**

Under both ASA 2 to AB 763 and SSA 2 to SB 403, any law enforcement officer who used excessive force based solely on an individual's status as a concealed weapons licensee could be fined not more than \$500 or sentenced to a term of imprisonment of not more than 30 days or both.

### **Department of Justice Enforcement Authority**

Under both ASA 2 to AB 763 and SSA 2 to SB 403, DOJ would be specifically authorized to enforce the provisions related to: (1) submitting an intentionally false notarized statement as a part of a regular or renewal concealed weapons license application; (2) intentionally making false statements in connection with the issuance of an emergency concealed weapons license; (3) intentionally failing to report to the Department a charge within 10 days of being charged under federal law or the law of another state with any crime or drunk driving offense; or (4) intentionally failing to surrender a concealed weapons license to the Department when directed as a result of the revocation or suspension of the license.

### **Retired Law Enforcement Officer Identification Cards**

Under both ASA 2 to AB 763 and SSA 2 to SB 403, state law enforcement agencies that do not issue photographic identification cards to their officers, would be required to issue such a card to an officer formerly employed by that agency upon the former officer's request and at his or her expense provided that the officer: (1) may lawfully possess a firearm under federal law; (2) retired in good standing from service as a law enforcement officer with the agency or did not retire as a

result of mental instability; (3) either was regularly employed as a law enforcement officer for at least 15 years, or retired from service with the agency due to a service-connected disability after having completed any applicable probationary period of service; and (4) has a nonforfeitable right to benefits under the agency's retirement plan.

### **Technical Corrections**

Both ASA 2 to AB 763 and SSA 2 to SB 403 would make the following technical corrections to the language contained in ASA 1 and SSA 1, respectively:

*Department of Justice Background Check Process.* The background check process would be simplified to reflect that DOJ, not county sheriffs, receives the original applications for concealed weapons licensure under the substitute amendments. As a result, the Department would no longer: (1) issue confirmation numbers [to county sheriffs] associated with concealed carry background checks; and (2) check each application form against the information received [from county sheriffs] regarding individual background checks.

*Electric Weapons.* The language regarding the criminal liability of manufacturers or sellers of electric weapons would be modified to make it clear that no criminal liability would attach for such manufacturers or sellers if they intended to provide an electric weapon to a person for use in his or her dwelling or place of business or on land that he or she owns, leases, or legally occupies.

Prepared by: Paul Onsager