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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director*  
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TO: MEMBERS OF THE JOINT COMMITTEE ON FINANCE

FROM: Anne Sappenfield, Senior Staff Attorney <sup>AS</sup>

RE: Senate Substitute Amendment \_\_ (LRBs0135/3) to 2011 Senate Bill 93, Relating to Going Armed With Weapons, Possessing or Transporting a Firearm, Bow, or Crossbow Under Certain Circumstances, Disorderly Conduct Limitations, and Electric Weapons

DATE: June 9, 2011

This memorandum describes Senate Substitute Amendment \_\_ (LRBs0135/3) to 2011 Senate Bill 93, relating to going armed with weapons, possessing or transporting a firearm, bow, or crossbow under certain circumstances, disorderly conduct limitations, and electric weapons.

### **CRIME AGAINST CARRYING A CONCEALED WEAPON AND CARRYING WEAPONS IN CERTAIN PLACES**

#### **Current Law**

Under current law, any person except a peace officer who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor. Current law also contains criminal offenses that prohibit carrying a firearm in a public building and carrying a handgun where alcohol beverages are sold and consumed.

#### **The Substitute Amendment**

The substitute amendment creates a process to obtain a license to carry a concealed weapon, as described below. A person who is licensed as provided in the substitute amendment is exempted from the crime that prohibits carrying a concealed weapon, carrying a firearm in a public building, and carrying a handgun where alcohol beverages are sold and consumed. In addition, the substitute amendment provides that these offenses do not apply to an out-of-state licensee, as discussed below. However, a licensee or an out-of-state licensee is exempt from the offense of carrying a handgun where alcohol beverages are sold and consumed only if he or she is not consuming alcohol on the premises.

The substitute amendment also provides that the offense of carrying a concealed weapon does not apply to any of the following:

- A qualified out-of-state law enforcement officer<sup>1</sup>, but only if all of the following apply:
  - The weapon is a firearm but is not a machine gun or a destructive device (e.g., a bomb or grenade).
  - The officer is not carrying a firearm silencer.
  - The officer is not under the influence of an intoxicant.
- A former officer (i.e., a person who served as a law enforcement officer with a law enforcement agency before separating from service as a law enforcement officer) to whom all of the following apply:
  - The former officer has been issued a photographic identification document or identification or certification card, as described below.
  - The weapon is a firearm that is of the type described in the identification document.
  - Within the preceding 12 months, the former officer met the standards of the state in which he or she resides for training and qualification for active duty law enforcement officers to carry firearms.
  - The weapon is a firearm but is not a machine gun or a destructive device.
  - The former officer is not carrying a firearm silencer.
  - The former officer is not under the influence of an intoxicant.
  - The former officer is not prohibited under federal law from possessing a firearm.
- An individual who carries a concealed and dangerous weapon in his or her own dwelling or place of business or on land that he or she owns, leases, or legally occupies.

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<sup>1</sup> For purposes of the offense of carrying a concealed weapon, the substitute amendment defines “qualified out-of-state law enforcement officer” as a law enforcement officer to whom *all* of the following apply:

- The person is employed by a state or local government agency in another state.
- The agency has authorized the person to carry a firearm.
- The person is not the subject of any disciplinary action by the agency that could result in the suspension or loss of the person’s law enforcement authority.
- The person meets all standards established by the agency to qualify the person on a regular basis to use a firearm.
- The person is not prohibited under federal law from possessing a firearm.

Under the substitute amendment, a qualified out-of-state law enforcement officer and a former officer must have identification, as specified in the substitute amendment, with him or her while carrying a concealed weapon. A person who violates this requirement may be required to forfeit not more than \$25 except that the person is exempt from this penalty if he or she presents his or her license document and photographic identification to the law enforcement agency within 48 hours.

Qualified out-of-state law enforcement officers and former officers who meet the conditions described above are also exempt from the offenses of carrying a firearm in a public building and carrying a handgun where alcohol beverages are sold and consumed.

### *POSSESSION OF ELECTRIC WEAPONS*

#### *Current Law*

Under current law, whoever sells, transports, manufactures, possesses, or goes armed with any electric weapon is guilty of a Class H felony. This provision does not apply to the following:

- Any peace officer.
- Any armed forces or National Guard personnel while on official duty.
- Any corrections personnel in a county or in the Department of Corrections while on official duty.
- Any manufacturer or seller whose electric weapons are used solely by the persons listed above.
- Any common carrier transporting electric weapons.

#### *The Substitute Amendment*

Under the substitute amendment, in addition to the exceptions under current law, the prohibition against possessing or going armed with an electric weapon does not apply to any of the following:

- A licensee or an out-of-state licensee.
- An individual who goes armed with an electric weapon in his or her own dwelling or place of business or on land that he or she owns, leases, or legally occupies.

The substitute amendment also provides that the prohibition against transporting an electric weapon does not apply to any of the following:

- A licensee or an out-of-state licensee.
- An individual who is not a licensee or out-of-state licensee who transports an electric weapon if the electric weapon is enclosed within a carrying case.

## LICENSES TO CARRY A CONCEALED WEAPON

The substitute amendment creates a license to carry a concealed weapon. Under the substitute amendment, "weapon" is defined as a handgun, an electric weapon, a knife other than a switchblade, or a substitute amendment club. The licenses are issued by the Department of Justice (DOJ). The substitute amendment specifies the requirements for licensure and provides that DOJ may not impose conditions, limitations, or requirements that are not expressly provided in the section on the issuance, scope, effect, or content of a license. The substitute amendment provides that, unless expressly provided, the licensure statute does not limit an individual's right to carry a firearm that is not concealed.

Under the substitute amendment, a licensee or an out-of-state licensee may carry a concealed weapon anywhere in Wisconsin except as provided in the substitute amendment.

### Out-of-State Licensees

The substitute amendment requires DOJ to promulgate, by rule, a list of states that issue a permit, license, approval, or other authorization to carry a concealed weapon if the permit, license, approval, or other authorization requires, or designates that the holder chose to submit to, a background search that is comparable to the background check required to obtain a license in Wisconsin.

Under the substitute amendment, "out-of-state licensee" is defined as an individual who is 21 years of age or over, who is not a Wisconsin resident, and who has been issued an out-of-state license from a state listed by DOJ and that, if necessary, designates that the holder chose to submit to a background check.

The substitute amendment contains a statement that, for purposes of federal law under which an individual is exempt from the prohibition against possessing a firearm in a school zone because he or she is licensed to possess a firearm under the conditions set forth in federal law, an out-of-state licensee is licensed by Wisconsin.

### Display of License Document

Under the substitute amendment, unless a licensee or out-of-state licensee is carrying a concealed weapon in his or her own dwelling or place of business or on land that he or she owns, leases, or legally occupies, a licensee must have with him or her his or her license document and photographic identification card and an out-of-state licensee must have with him or her his or her out-of-state license and photographic identification card at all times during which he or she is carrying a concealed weapon. A licensee or out-of-state licensee who is carrying a concealed weapon must display the license and identification to a law enforcement officer upon the request of the law enforcement officer while the law enforcement officer is acting in an official capacity and with lawful authority.

A person who violates either of the above requirements may be required to forfeit not more than \$25 except that the a person is exempt from this penalty if he or she presents his or her license document and photographic identification to the law enforcement agency within 48 hours.

### License Document

The substitute amendment requires DOJ to design a single license document for licenses to carry a concealed weapon. DOJ must complete the design of the license document no later than the first day of the second month beginning after the effective date of the legislation. The substitute amendment specifies what the document must contain and some of the characteristics of the document. The substitute amendment requires the license to contain a unique identification for each licensee.

The substitute amendment permits DOJ to contract with the Department of Transportation (DOT) to produce and issue license documents. Neither DOT nor any employee of DOT may store, maintain, or access the information provided by DOJ for the production or issuance of license documents other than to the extent necessary to produce or issue the license documents. A person who violates this provision may be fined not more than \$500 or sentenced to a term of imprisonment of not more than 30 days, or both.

### Restrictions on Issuing a License

Under the substitute amendment, DOJ must issue a license to carry a concealed weapon to an individual who submits an application, as required under the substitute amendment, *unless* any of the following applies:

- The individual is less than 21 years of age.
- The individual is prohibited under federal or state law from possessing a firearm.
- The individual has been charged with a misdemeanor or a felony and the court has prohibited the individual from possessing a dangerous weapon as a condition of bail or a condition of release.
- The individual is not a Wisconsin resident.
- The individual has not provided proof of training.

### Training Requirements

In an application for a license, an individual must include proof of having received firearm training. The proof of training requirement may be met by *any* of the following:

- A copy of a document, or an affidavit from an instructor or organization that conducted the course or program, that indicates that the individual completed any of the following:
  - The hunter education program established by the Department of Natural Resources (DNR) or a substantially similar program that is established by another state, country, or province and that is recognized by DNR.
  - A firearms safety or training course that is conducted by a national or state organization that certifies firearms instructors.

- A firearms safety or training course that is available to the public and is offered by a law enforcement agency or, if the course is taught by an instructor who is certified by a national or state organization that certifies firearms instructors or by DOJ, by a technical college, a college or university, a private or public institution or organization, or a firearms training school.
- A firearms safety or training course that is offered to law enforcement officers or to owners and employees of licensed private detective and security agencies.
- A firearms safety or training course that is conducted by a firearms instructor who is certified by a national or state organization that certifies firearms instructors or who is certified by DOJ.
- Documentation that the individual participated in organized shooting competitions or completed military, law enforcement, or security training that gave the individual experience with firearms that is substantially equivalent to a course or program described above.
- A current or expired license, or a photocopy of a current or expired license, that the individual holds or has held that indicates that the individual is licensed or has been licensed to carry a firearm in this state or in another state or in a county or municipality of this state or of another state unless the license has been revoked for cause.
- Documentation of completion of small arms training while serving in the U.S. armed forces as demonstrated by an honorable discharge or general discharge under honorable conditions or a certificate of completion of basic training with a service record of successful completion of small arms training and certification.

The substitute amendment requires DOJ to certify instructors and to maintain a list of instructors that it certifies. To be certified, a person must meet all of the following criteria:

- Be qualified to carry a concealed weapon.
- Be able to demonstrate the ability and knowledge required for providing firearms safety and training.

The substitute amendment specifies that DOJ may not require firing live ammunition to meet the training requirements.

Under the substitute amendment, an instructor of a firearms training course, as described above, who intentionally submits false documentation indicating that an individual has met the training requirements may be prosecuted for false swearing.

### *Application for a License*

DOJ must design an application form for licenses, and the forms must contain certain provisions such as a statement describing current law regarding self-defense and statements relating to the penalties for providing false information in the application. An individual may apply for a license under the

substitute amendment by submitting a completed application form, a statement that the information submitted in or with the application is true and complete to the best of his or her knowledge, a license fee in an amount determined by DOJ but which may not exceed \$37, and a \$13 fee for a background check.

DOJ must complete the design of the application form no later than the first day of the second month beginning after the effective date of the legislation.

When DOJ receives an application, it must conduct a background check using the procedures set forth in the substitute amendment to determine if the person is qualified under state and federal law possess a firearm. If DOJ denies an application, DOJ must inform the applicant in writing, stating the reason and factual basis for the denial.

The substitute amendment authorizes DOJ to enforce the offense of false swearing with respect to false statements submitted or made in an application for a license or an application to renew a license.

Within 21 days of receiving the application, DOJ must either issue a license or deny the license application. In addition, beginning on the day after publication of the legislation and ending on the first day of the fifth month after that day, DOJ must, as soon as practicable and without delay, but no longer than 45 days after receiving a complete application, either issue the license and promptly send the licensee the license document by 1<sup>st</sup> class mail or deny the application, as described above.

### **Emergency License**

Under the substitute amendment, an individual who requires an immediate license may petition the court in the county in which he or she resides for such a license. Unless the court knows that the individual is ineligible for a license, a court may issue a temporary license to an individual if the court determines that immediate licensure is warranted to protect the individual from death or great bodily harm. An emergency license is valid for 30 days unless it is revoked by the court or is void because the person applies for a license and is found by DOJ to be ineligible.

### **Updated Information Regarding Eligibility**

Under the substitute amendment, the court automated information systems (i.e., the Consolidated Court Automated Programs or CCAP), or the clerk or register in probate if the information is not contained or cannot be transmitted by the court automated information systems, must promptly notify DOJ of the name of any individual for whom there is a court finding that disqualifies the individual from being permitted to possess a firearm. For example, DOJ must be notified if an individual is found to have committed a felony or is involuntarily committed for mental health treatment. DOJ must then determine whether the individual is a licensee.

The substitute amendment also requires a licensee to notify DOJ of a new address within 30 days of changing his or her address. A person who violates this requirement must be issued a warning for the first violation. For a subsequent violation, the person may be required to forfeit \$50. In addition, if a person fails to notify DOJ of an address change and his or her license has been revoked, the person may be required to forfeit \$50. A licensee may not be charged with a violation of failing to notify DOJ of an address change if DOJ learns of the violation when the licensee informs DOJ of the address change.

**Maintenance, Use, and Publication of Records by DOJ**

The substitute amendment requires DOJ to maintain a computerized record listing the names of and specified information concerning all individuals who have been issued a license and former law enforcement officers who have been issued certification cards, as described below. Unless specifically authorized in the substitute amendment, neither DOJ nor any DOJ employee may store, maintain, format, sort, or access the information in any way other than by the names, dates of birth, or sex of licensees or individuals, or by the identification numbers assigned to licensees.

A law enforcement officer may not request or be provided information from such computerized record concerning a specific individual except for one of the following purposes:

- To confirm that a license or certification card produced by an individual at the request of a law enforcement officer is valid.
- If an individual is carrying a concealed weapon and claims to hold a valid license or valid certification card but does not have his or her license document or certification card, to confirm that the individual holds a valid license or certification card.
- To investigate whether an individual submitted an intentionally false statement in applying for an initial or renewal license.
- To investigate whether an individual complied with requirements to deliver his or her license to DOJ or notify DOJ that the person no longer has possession of his or her license when the individual's license is revoked.

A person who is a law enforcement officer in a state other than Wisconsin may request and be provided with information to confirm a license or certification card is valid or to confirm that the individual holds a valid license or certification card, as described above.

The substitute amendment provides that, notwithstanding the Wisconsin open records law, DOJ, DOT, or any employee of DOJ or DOT, may not make information obtained as permitted in the substitute amendment available to the public except in the context of a prosecution for an offense in which the person's status as a licensee or holder of a certification card is relevant or through DOJ's annual report to the Legislature and the Governor, described below.

A person who violates these provisions may be fined not more than \$500 or imprisoned for not more than 30 days, or both.

**Providing Licensee Information to Law Enforcement Agencies**

Under the substitute amendment, DOJ must provide information concerning a specific individual on the list of licensees maintained by DOJ to a law enforcement agency, but only if the law enforcement agency is requesting the information for any of the following purposes:

- To confirm that a license or certification card produced by an individual at the request of a law enforcement officer is valid.



- If an individual is carrying a concealed weapon and claims to hold a valid license or valid certification card but does not have his or her license document or certification card, to confirm that the individual holds a valid license or certification card.
- If the law enforcement agency is a Wisconsin law enforcement agency, to investigate whether an individual submitted an intentionally false statement in applying for an initial or renewal license.

The substitute amendment provides that, notwithstanding the Wisconsin open records law, neither a law enforcement agency nor any of its employees may make information regarding an individual obtained as permitted in the substitute amendment available to the public except in the context of a prosecution for an offense in which the person's status as a licensee or holder of a certification card is relevant.

Under the substitute amendment, neither a law enforcement agency nor any of its employees may store or maintain information regarding an individual that was obtained from DOJ, as described above, based on the individual's status as a licensee or holder of a certificate card. In addition, neither a law enforcement agency nor any of its employees 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 or holders of certification cards of any individuals involved.

A person who violates these provisions may be fined not more than \$500 or imprisoned for not more than 30 days, or both.

#### **Lost or Destroyed License**

Under the substitute amendment, if a license document is lost, a licensee no longer has possession of his or her license, or a license document is destroyed, unreadable, or unusable, a licensee may submit to DOJ a statement requesting a replacement license document; a license document or any portions of the license document, if available; and a \$12 replacement fee. DOJ must issue a replacement within 14 days of receiving the statement and fee.

#### **License Revocation and Suspension**

The substitute amendment requires DOJ to revoke a license if DOJ determines that a licensee no longer meets the requirements for licensure (e.g., is prohibited from possessing a firearm due to a felony conviction). DOJ must suspend a license if a court has prohibited the licensee from possessing a dangerous weapon as a condition of bail. If the individual whose license was suspended is no longer subject to such a condition and the license is otherwise valid, DOJ must restore the license within five business days of notification that the license is no longer subject to the prohibition.

If DOJ revokes or suspends a license, DOJ must send a notice by mail within one day after the suspension or revocation. The suspension or revocation takes effect when the individual receives the notice.

Within seven days after receiving a notice of suspension or revocation, the individual whose license has been suspended must: (a) deliver the license document personally or by certified mail to

DOJ; or (b) mail a signed statement stating that he or she no longer has possession of his or her license document and stating why he or she no longer has possession. A person who intentionally fails to meet this requirement must be fined not more than \$500 and may be imprisoned for not more than 30 days, or both.

### Review and Appeal of Licensing Decisions

Under the substitute amendment, DOJ must promulgate rules providing for the review of any action by DOJ denying an application for, or suspending or revoking, a license.

The substitute amendment also permits an individual aggrieved by any DOJ action denying an application for, or suspending or revoking, a license, to appeal directly to the circuit court of the county in which the individual resides without regard to whether the individual has sought review under DOJ's review process.

The court must reverse DOJ's action if the court finds any of the following:

- That DOJ failed to follow any procedure, or take any action, prescribed under the license law.
- That DOJ erroneously interpreted a provision of law and a correct interpretation compels a different action.
- That DOJ's action depends on a finding of fact that is not supported by substantial evidence in the record.
- If the appeal is regarding a denial, that the denial was based on factors other than the factors set forth under the substitute amendment relating to eligibility for a license.
- If the appeal is regarding a suspension or revocation, that the suspension or revocation was based on criteria other than those set forth in the substitute amendment.

The substitute amendment provides that the court's decision must provide whatever relief is appropriate. If the court reverses DOJ's action, the court may order DOJ to pay the aggrieved individual all court costs and reasonable attorney fees.

### License Expiration and Renewal

Under the substitute amendment, a license remains in effect for five years unless it is suspended or revoked before then. At least 90 days before the expiration of a license, DOJ must mail to the licensee a notice of expiration form and a form for renewing the license. DOJ must renew the license if, no later than 90 days after the expiration date of the license, the licensee does all of the following:

- Submits a renewal application on the form provided by DOJ.
- Submits a statement reporting that the information on the renewal application is true and complete to the best of his or her knowledge and that he or she is not disqualified from possessing a license.

- Pays a renewal fee in an amount, as determined by DOJ by rule, that is equal to the cost of renewing the license but does not exceed \$12 and the \$13 fee for a background check.

DOJ must conduct a background check of a licensee before renewing the license. DOJ must issue a renewal license within 21 days after receiving the application, statement, and fees.

Under the substitute amendment, the license of a member of the U.S. armed forces, a reserve unit of the armed forces, or the National Guard who is deployed overseas while on active duty may not expire until at least 90 days after the end of the licensee's overseas deployment unless the license is suspended or revoked.

DOJ must complete the design of the renewal form no later than the first day of the 36<sup>th</sup> month beginning after the effective date of the legislation.

### *Employer Restrictions*

Under the substitute amendment, an employer may prohibit an employee from carrying a concealed weapon or a particular type of concealed weapon in the course of the employee's employment or during any part of the course of the employee's employment. However, an employer may not prohibit an employee, as a condition of employment, from carrying a concealed weapon, a particular type of concealed weapon, or ammunition or from storing a weapon, a particular type of weapon, or ammunition in the employee's own motor vehicle, regardless of whether the motor vehicle is used in the course of employment or whether the motor vehicle is driven or parked on property used by the employer.

### *Prohibited Activity*

Under the substitute amendment, neither a licensee nor an out-of-state licensee may knowingly carry a concealed weapon, a weapon that is not concealed, or a firearm that is not a weapon (e.g., a machine gun) in any of the following places:

- Any portion of a building that is a police station, sheriff's office, state patrol station, or the office of a Division of Criminal Investigation special agent of DOJ.
- Any portion of a building that is a prison, jail, house of correction, or secured correctional facility.
- The Sand Ridge Secure Treatment Center, the Wisconsin Resource Center, or any secured unit or secured portion of a mental health institution, including a facility designated as the Maximum Security Facility at the Mendota Mental Health Institute.
- Any portion of a building that is a county, state, or federal courthouse.
- Any portion of a building that is a municipal courtroom if court is in session.
- A place beyond a security checkpoint in an airport.

The above prohibitions do not apply to any of the following:

- A weapon in a vehicle driven or parked in a parking facility located in a building that is used as, or any portion of which is used as, a location described above.
- A weapon in a courthouse if a judge who is a licensee is carrying the weapon, or if another licensee or out-of-state licensee, whom a judge has permitted in writing to carry a weapon, is carrying the weapon.
- A weapon in a courthouse or courtroom if a district attorney, or an assistant district attorney, who is a licensee is carrying the weapon.

A person who violates the above provisions may be fined not more than \$500 or imprisoned for not more than 30 days, or both.

#### **Reciprocity Agreements With Other States**

The substitute amendment permits DOJ to enter into reciprocity agreements with other states as to matters relating to licenses or other authorization to carry concealed weapons.

#### **Statistical Report**

The substitute amendment requires DOJ to submit a statistical report to the Legislature and the Governor annually by March 1. The report must indicate the number of licenses applied for, issued, denied, suspended, and revoked during the previous calendar year. For the licenses denied, the report must indicate the reasons for the denials and the part of the application process in which the reasons for denial were discovered. For licenses suspended or revoked, the report must indicate the reasons for the suspensions and revocations. DOJ may not include in the report any information that may be used to identify an applicant or a licensee, including a name, address, birth date, or Social Security number.

#### **Immunity**

The substitute amendment provides immunity to various persons, as follows:

- DOJ, DOT, and the employees of each department; clerks or registers in probate and their staff, and the court automated information systems and their employees are immune from liability arising from any act or omission under the substitute amendment, if done so in good faith.
- A person who does not prohibit an individual from carrying a concealed weapon on property that the person owns or occupies is immune from any liability arising from his or her decision.
- An employer who does not prohibit one or more employees from carrying a concealed weapon is immune from any liability arising from that decision.
- A person providing a firearms training course in good faith is immune from liability from any act or omission related to the course if the course is one of the courses listed in the substitute amendment.

**PENALTY IF LAW ENFORCEMENT OFFICER USES EXCESSIVE FORCE AGAINST LICENSEE**

Under the substitute amendment, 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. The application of this penalty does not preclude the application of any other civil or criminal remedy.

**LAW ENFORCEMENT OFFICER IDENTIFICATION CARDS**

As discussed above, a law enforcement officer who has a photographic identification card is exempt from certain offenses relating to carrying a firearm. The substitute amendment provides that if a Wisconsin law enforcement agency<sup>2</sup> issues photographic identification cards to its officers, it may not require an officer to relinquish his or her card when the officer separates from service with the Wisconsin law enforcement agency unless one of the following applies:

- The officer may not lawfully possess a firearm under federal law.
- The officer did not separate from service in good standing as a law enforcement officer with the agency.
- The officer served as a law enforcement officer for an aggregate of less than 10 years. This provision does not apply if the officer, after completing any applicable probationary period of service with the agency, separated from service with the agency due to a service-connected disability, as determined by the agency.
- Either of the following applies:
  - A qualified medical professional employed by the law enforcement agency has found the officer to be unqualified for reasons related to the officer's mental health.
  - The officer has entered into an agreement with the law enforcement agency from which he or she is separating from service in which the officer acknowledges that he or she is not qualified to be a law enforcement officer for reasons related to the officer's mental health and in which the officer declines the photographic identification for that reason.

Unless one of the exceptions above applies, if a Wisconsin law enforcement agency does not issue photographic identification cards to its officers, it must issue such a card to an officer who separates from service with that agency upon the separating officer's request and at his or her request.

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<sup>2</sup> "Wisconsin law enforcement agency" is defined as a governmental unit of one or more persons employed by this state or a political subdivision of this state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

The substitute amendment provides that this provision does not restrict the right of an officer who has separated from service to go armed with a firearm that is not concealed.

### **FORMER LAW ENFORCEMENT OFFICERS SEEKING TO CARRY CONCEALED WEAPONS**

As discussed above, a former law enforcement officer who has a photographic identification card or a certification card is exempt from certain offenses relating to carrying a firearm. Under the substitute amendment, upon the request of a former law enforcement officer<sup>3</sup> and at the expense of the former law enforcement officer, a law enforcement agency that employed the former law enforcement officer must issue the former law enforcement officer a certification card stating *all* of the following:

- The type of firearm the former law enforcement officer is certified to carry, but no former officer may be certified to carry a machine gun, a firearm silencer, or a destructive device.
- The former law enforcement officer has been found by the state, or by a certified firearms instructor who is qualified to conduct a firearms qualification test for active law enforcement officers in the state, to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm that are established by the state or, if the state does not establish standards, by the law enforcement agency from which the former law enforcement officer separated.
- The date that the agency finds that the former officer meets the standards for qualification in firearms training for active law enforcement officers to carry a firearm and an expiration date that is 12 months later than that date.
- That the former law enforcement officer is qualified to carry a concealed firearm.

The law enforcement agency may *not* issue the former law enforcement officer a certification card *unless* the law enforcement agency first verifies all of the following:

- The former law enforcement officer separated from service as a law enforcement officer with the law enforcement agency in good standing.
- The former law enforcement officer served as a law enforcement officer for an aggregate of at least 10 years or the former law enforcement officer separated from law enforcement service due to a service-connected disability, as determined by the law enforcement agency, after completing any applicable probationary period.
- Both of the following:

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<sup>3</sup> The substitute amendment defines "*former law enforcement officer*" as a person who separated from service as a law enforcement officer at a state or local law enforcement agency in Wisconsin. "*Law enforcement officer*" is defined as a person who is employed by a law enforcement agency for the purpose of engaging in, or supervising others engaging in, the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and who has statutory powers of arrest. "*Law enforcement agency*" is defined as an agency that consists of one or more persons employed by the federal government; a state or a political subdivision of a state; the U.S. armed forces; or the National Guard, that has as its purpose the prevention and detection of crime and the enforcement of laws or ordinances, and that is authorized to make arrests for crimes.

- A qualified medical professional employed by the law enforcement agency has not found the former law enforcement officer to be unqualified for reasons related to the former officer's mental health.
- The former law enforcement officer has not entered into an agreement with the law enforcement agency from which he or she separated from service in which the former officer acknowledges that he or she is not qualified to be a law enforcement officer for reasons related to the officer's mental health and in which the officer declines the photographic identification for that reason.
- The former law enforcement officer is not prohibited under federal law from possessing a firearm as indicated by a search of the Transactional Information for Management of Enforcement (TIME) system and the National Crime Information Center System.
- The former law enforcement officer has, during the previous 12 months at his or her own expense, been found by the state, or by a certified firearms instructor, to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm.

The substitute amendment further provides that, upon the request of a former federal law enforcement officer who resides in Wisconsin and at the expense of the former federal law enforcement officer, DOJ may, unless the person is disqualified, as described above, issue the former federal law enforcement officer a certification card, using the same requirements and criteria described above. If DOJ issues a former federal law enforcement officer a certification card, DOJ must add the former officer's information to the list of licensees DOJ maintains.

The substitute amendment sets forth the requirements for the design and contents of the certification card and includes a process for renewing certification cards. The substitute amendment permits DOJ to charge a fee to verify eligibility for a certification card and for issuance and renewal of certification cards, but the fee may not exceed the costs DOJ incurs for those activities.

The substitute amendment provides that, when acting in good faith, DOJ and its employees and a law enforcement agency and its employees are immune from civil and criminal liability arising from any act or omission under the above provisions. In addition, an entity providing firearms training and its employees are immune from civil and criminal liability arising from any act or omission that is related to training under the above provisions.

The substitute amendment specifies that the above provisions do not limit a former officer's right to go armed with a firearm that is not concealed.

## **TRESPASS LAW**

### **Current Law**

Current law generally prohibits entering or remaining on another person's land after having been notified by the owner or occupant not to enter or remain on the premises. This offense is punishable by a Class B forfeiture.

### The Substitute Amendment

The substitute amendment provides that the current prohibition on entering or remaining on any land of another after having been notified by the owner or occupant not to enter or remain on the premises does not apply to an individual if the owner's or occupant's intent is to prevent the individual from carrying a firearm on the land.

The substitute amendment also creates new provisions in the trespass statute to permit certain owners and occupants of property to prohibit persons from carrying a concealed weapon in or on the property. Under the substitute amendment, a person may be subject to a Class B forfeiture if he or she, while carrying a firearm, does one of the following:

- Enters or remains at a *residence* that the person does not own or occupy after the owner of the residence, if he or she has not leased it to another person, or the occupant of the residence has notified the person not to enter or remain at the residence while carrying a firearm or with that type of firearm. In the substitute amendment, "residence," with respect to a single-family residence, includes the residence building and the parcel of land upon which the residence building is located. If a residence is not a single-family residence, "residence" does not include any common area of the building in which the residence is located or any common areas on the rest of the parcel of land upon which the residence building is located.

- Enters or remains in the common area in a building, or on the grounds of a building, that is a residence that is not a single-family residence if the actor does not own the residence or does not occupy any part of the residence and if the owner of the residence has notified the actor not to remain in the common area or on the grounds while carrying a firearm or with that type of firearm. This provision does not apply to a part of the grounds that is used for parking if the firearm is in a vehicle driven or parked in that part.

- Enters or remains in any part of a *nonresidential building, grounds of a nonresidential building, or land* that the person does not own or occupy after the owner of the building, grounds, or land, if that part of the building, grounds, or land has not been leased to another person, or the occupant of that part of the building, grounds, or land has notified the person not to enter or remain in that part of the building, grounds, or land while carrying a firearm. This provision does *not* apply to a part of a building, grounds, or land occupied by the state or by a local unit of government; to a privately or publicly owned building on the grounds of a university or college; or to the grounds of or land owned or occupied by a university or college. In addition, if the firearm is in a vehicle driven or parked in a parking facility, this provision does not apply to any part of a building, grounds, or land used as a parking facility. The substitute amendment specifies that "nonresidential building" includes a nursing home, a community-based residential facility, a residential care apartment complex, an adult family home, and a hospice.

- Enters or remains at a *special event* if the organizers of the special event have notified the actor not to remain at the special event while carrying a firearm or with that type of firearm. The provision does not apply if the firearm is in a vehicle driven or parked in the parking facility, to any part of the special event grounds or building that is used as a parking facility. The substitute amendment defines "special event" as an event that is open to the public, is for a duration of not more than three



weeks, and either has designated entrances to and from the event that are locked when the event is closed or requires an admission.

- Enters or remains in 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 or a type of firearm. This provision does not apply to the governmental buildings in which a licensee is otherwise prohibited from carrying a concealed weapon under the substitute amendment. In addition, this provision does not apply to a person who leases residential or business premises in the building or, if the firearm is in a vehicle driven or parked in a parking facility, to any part of a building used as a parking facility.

- Enters or remains in any privately or publicly owned ***buildings on the grounds of a university or college***, if the university or college has notified the actor not to enter or remain in the building while carrying a firearm or with that type of firearm. The provision does not apply to a person who leases residential or business premises in the building or, if the firearm is in a vehicle driven or parked in the parking facility, to any part of the building used as a parking facility.

In order to give notice under the above provisions, other than the provision relating to single-family residences, an owner or occupant must post a sign notifying persons of the restriction. If an owner or occupant of a building or part of a building is permitted to post a sign to notify that carrying of firearms is prohibited in the building or part of the building, the owner or occupant must post a sign that is located in a prominent place near all of the entrances of the part of the building to which the restriction applies and it must be posted so that any individual entering the building must be reasonably expected to see the sign. If grounds of a building or land may be posted, as described above, the owner or occupant must post a sign that is located in a prominent place near all probable access points to the grounds or land to which the restriction applies and any individual entering the grounds or land can be reasonably expected to see the sign. Finally, organizers of a special event may post the special event by posting a sign that is located in a prominent place near all of the entrances to the special event and any individual attending the special event can be reasonably expected to see the sign. For all of these provisions, the sign must be at least five inches by seven inches.

Under the substitute amendment, a person that does not prohibit an individual who is carrying a firearm from entering or remaining on property that the person owns or occupies is immune from any liability arising from its decision.

### **UNLAWFUL USE OF LICENSE FOR CARRYING A CONCEALED WEAPON**

The substitute amendment creates an offense under which a person who does any of the following is guilty of a Class A misdemeanor:

- Intentionally represents as valid any revoked, suspended, fictitious, or fraudulently altered license.
- If the actor holds a license, intentionally sells or lends the license to any other individual or knowingly permits another individual to use the license.
- Intentionally represents as one's own any license not issued to him or her.

- If the actor holds a license, intentionally permits any unlawful use of that license.
- Intentionally reproduces by any means a copy of a license for a purpose that is prohibited.
- Intentionally defaces or intentionally alters a license.

### **EXCEPTION TO DISORDERLY CONDUCT OFFENSE**

#### **Current Law**

Under current law, whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor. Municipalities may also enact ordinances to prohibit disorderly conduct.

#### **The Substitute Amendment**

The substitute amendment provides that a person may not be in violation of, or charged with a violation of, the disorderly conduct statute or an ordinance relating to disorderly conduct for loading, carrying, or going armed with a firearm, without regard to whether the firearm is loaded or is concealed or openly carried unless other facts and circumstances apply that indicate a criminal or malicious intent on the part of the person.

### **GUN-FREE SCHOOL ZONES**

#### **Current Law**

Under current law, any person who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone is guilty of a Class I felony. "School zone" is defined as: (a) in or on the grounds of a school; and (b) within 1,000 feet from the grounds of a school.

This offense does not apply to possession of a firearm under any of the following circumstances:

- On private property not part of school grounds.
- If the individual possessing the firearm is licensed to do so by a political subdivision of the state in which the school zone is located or by the U.S. Bureau of Alcohol, Tobacco, and Firearms and the law of the political subdivision requires that, before an individual may obtain such a license, the law enforcement authorities must verify that the individual is qualified under law to receive the license.
- The firearm is not loaded and is encased or in a locked firearms rack that is on a motor vehicle.
- By an individual for use in a program approved by a school in the school zone.

- By an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual.
- By a law enforcement officer or state-certified commission warden acting in his or her official capacity.
- The firearm is unloaded and is possessed by an individual while traversing school grounds for the purpose of gaining access to public or private lands open to hunting, if the entry on the school grounds is authorized by school authorities.
- By a person legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest.

### *The Substitute Amendment*

Under the substitute amendment, it is a Class I felony to knowingly possess a firearm at a place that the individual knows, or has reasonable cause to believe, is in or on the grounds of a school. Under the substitute amendment, it is a Class B forfeiture to possess a firearm at a place the individual knows, or has reasonable cause to believe, is within 1,000 feet of the grounds of a school.

The substitute amendment repeals all the conditions under which an individual may possess a firearm in a school zone except the following:

- The firearm is not loaded and is encased or in a locked firearms rack that is on a motor vehicle.
- By a state-certified commission warden acting in his or her official capacity.
- By a person legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest.

Under the substitute amendment, an individual may possess a firearm in or on the grounds of a school or within 1,000 feet of the grounds of a school in accordance with any of the following provisions of federal law which are cross-referenced in the substitute amendment:

- On private property that is not part of school grounds.
- For use in a program approved by a school in the school zone.
- In accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual.
- By a law enforcement officer acting in his or her official capacity.
- The firearm is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on the school premises is authorized by school authorities.

The substitute amendment also permits a licensee or an out-of-state licensee to possess a firearm within 1,000 feet of the grounds of a school, but a licensee or out-of-state licensee who does not meet one of the other exceptions may not possess a firearm in or on the grounds of a school.

### **JUSTIFICATION FOR FIREARM DISCHARGE**

#### **Current Law**

Under current law, a city, village, or town exercising village powers may, by ordinance or resolution, restrict the discharge of a firearm. Current law also prohibits discharging a firearm near certain parks, from a vehicle, from or across a highway, or in or from an aircraft.

#### **The Substitute Amendment**

The substitute amendment contains a provision under which such an ordinance or resolution does not apply if the actor's conduct is justified or, had it been subject to a criminal penalty, would have been subject to a defense of privilege in the Criminal Code (e.g., was under circumstances of coercion or necessity or was in self-defense). The substitute amendment also creates exceptions for other statutory firearm discharge prohibitions, as described above, if the actor's conduct is justified or, had it been subject to a criminal penalty, would have been subject to a defense under the Criminal Code.

### **FIREARMS IN OR ON VEHICLES**

#### **Current Law**

Under current law, persons who possess firearms in vehicles or on certain types of land are generally required to have the firearm unloaded and encased.

#### **The Substitute Amendment**

The substitute amendment makes a number of statutory changes with respect to the placement, possession, and transportation of firearms in various types of vehicles, as follows:

- Permits placing, possessing, or transporting a firearm that is a handgun in a vehicle.
- Permits loading a firearm that is a handgun in a vehicle.
- Permits operating an all-terrain vehicle (ATV) with a handgun in the operator's possession.
- Permits placing, possessing, or transporting a handgun in or on a motorboat with the motor running.
- Permits placing, possessing, or transporting a firearm in or on a noncommercial aircraft if the firearm is a handgun.
- Modifies the prohibition against possession of a firearm unless it is unloaded or encased in a wildlife refuge so that it does not apply to a licensee or an out-of state licensee if the firearm is a

handgun, or to a law enforcement officer, a qualified out-of-state law enforcement officer, or a former officer if they meet the conditions for the exception for the offense of carrying a concealed weapon.

- Modifies the prohibition against having in one's possession or under one's control a firearm on land located in state parks or state fish hatcheries unless the firearm is unloaded and in a carrying case so that it does not apply to a licensee or an out-of state licensee if the firearm is a handgun, or to a law enforcement officer, a qualified out-of-state law enforcement officer, or a former officer if they meet the conditions for the exception for the offense of carrying a concealed weapon.

### **EFFECTIVE DATE**

The substitute amendment provides that the legislation takes effect on the first day of the fourth month beginning after publication, except that the following provisions take effect on the day after publication: (a) the changes to the disorderly conduct statutes; (b) the requirement that DOJ promulgate rules regarding what states issue authorizations to carry firearms that will be recognized as out-of-state licenses in Wisconsin; (c) the requirement that DOJ and law enforcement agencies design certification cards for former law enforcement officers; and (d) the requirements that DOJ design the license document and create license application forms. In addition, as noted above, DOJ must issue or deny a license within 45 days of receiving a complete application if the application is received after the day after publication of the legislation but before the first day of the fifth month beginning after that date.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

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