



2023 ASSEMBLY BILL 368

July 27, 2023 - Introduced by Representatives STUBBS, ANDRACA, SUBECK, C. ANDERSON, J. ANDERSON, BARE, BILLINGS, CABRERA, CLANCY, CONLEY, CONSIDINE, DRAKE, DOYLE, EMERSON, GOYKE, HAYWOOD, HONG, JACOBSON, JOERS, MADISON, MYERS, MOORE OMOKUNDE, OHNSTAD, PALMERI, RATCLIFF, RIEMER, SINICKI, SNODGRASS, SHELTON and VINING, cosponsored by Senators L. JOHNSON, CARPENTER, HESSELBEIN, LARSON, PFAFF, SPREITZER and SMITH. Referred to Committee on Criminal Justice and Public Safety.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to repeal** 175.35 (1) (b); **to renumber** 175.35 (2) (a), (b), (c) and (d) and
2 175.35 (2j); **to renumber and amend** 175.35 (2) (intro.) and 175.35 (2i); **to**
3 **amend** 20.455 (2) (gr), 175.35 (title), 175.35 (1) (at), 175.35 (2g) (a), 175.35 (2g)
4 (b) 1., 175.35 (2g) (b) 2., 175.35 (2k) (ar) 2., 175.35 (2k) (c) 2. a., 175.35 (2k) (c)
5 2. b., 175.35 (2k) (g), 175.35 (2k) (h), 175.35 (2L), 175.35 (2t) (a), (b) and (c),
6 175.35 (3) (b) 2., 175.60 (7) (d), 175.60 (15) (b) 4. b., 938.208 (1) (b), 938.34 (4m)
7 (b) 2., 938.341, 941.237 (1) (d), 941.296 (1) (b), 968.20 (3) (b), 971.17 (1g) and
8 973.176 (1); and **to create** 175.33, 175.35 (1) (br), 175.35 (2) (bm), 175.35 (2)
9 (cm) (intro.), 175.35 (2i) (b) 2., 175.35 (2j) (b) and 941.29 (1m) (dm), (dn) and (do)
10 of the statutes; **relating to:** sales and transfers of firearms and providing a
11 penalty.

Analysis by the Legislative Reference Bureau

Current law provides that a federally licensed firearms dealer may not transfer a handgun after a sale until the dealer has performed a background check on the prospective transferee to determine if he or she is prohibited from possessing a firearm under state or federal law. This bill generally prohibits any person from

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transferring any firearm, including the frame or receiver of a firearm, unless the transfer occurs through a federally licensed firearms dealer and involves a background check of the prospective transferee. Under the bill, the following are excepted from that prohibition: a transfer to a firearms dealer or to a law enforcement or armed services agency; a transfer of a firearm classified as antique; or a transfer that is by gift, bequest, or inheritance to a family member. A person who is convicted of violating the prohibition is guilty of a misdemeanor and must be fined not less than \$500 nor more than \$10,000, may be imprisoned for not more than nine months, and may not possess a firearm for a period of two years.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.455 (2) (gr) of the statutes is amended to read:

2 20.455 (2) (gr) *Handgun Firearm purchaser record check; checks for licenses or*
3 *certifications to carry concealed weapons.* All moneys received as fee payments under
4 ss. 175.35 (2i) (a), 175.49 (5m), and 175.60 (7) (c) and (d), (13), and (15) (b) 4. a. and
5 b. to provide services under ss. 175.35, 175.49, and 175.60.

6 **SECTION 2.** 175.33 of the statutes is created to read:

7 **175.33 Transfer of firearms. (1)** In this section:

8 (a) “Family member” means a spouse, parent, grandparent, sibling, child, or
9 grandchild. The relationship may be by blood, marriage, or adoption.

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

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

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

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

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1 (a) The transferor is a firearms dealer.

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

4 (c) The transfer of ownership of the firearm is one of the transfers listed under
5 s. 175.35 (2t).

6 (d) The transferor is transferring ownership of the firearm to a family member
7 by gift, bequest, or inheritance, the transferee is not prohibited from possessing a
8 firearm under s. 941.29 or federal law, and the transferee is at least 18 years of age.

9 **(3)** Any person who intentionally violates sub. (2) is guilty of a misdemeanor
10 and shall be fined not less than \$500 nor more than \$10,000 and may be imprisoned
11 for not more than 9 months. The person is also prohibited under s. 941.29 from
12 possessing a firearm for a period of 2 years.

13 **SECTION 3.** 175.35 (title) of the statutes is amended to read:

14 **175.35** (title) **Purchase Transfer of handguns firearms.**

15 **SECTION 4.** 175.35 (1) (at) of the statutes is amended to read:

16 175.35 **(1)** (at) “Firearms restrictions record search” means a search of
17 department of justice records to determine whether a person seeking to purchase be
18 transferred a handgun firearm is prohibited from possessing a firearm under s.
19 941.29. “Firearms restrictions record search” includes a criminal history record
20 search, a search to determine whether a person is prohibited from possessing a
21 firearm under s. 51.20 (13) (cv) 1., 2007 stats., a search in the national instant
22 criminal background check system to determine whether a person has been ordered
23 not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or
24 55.12 (10) (a), a search to determine whether the person is subject to an injunction
25 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued

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1 by a court established by any federally recognized Wisconsin Indian tribe or band,
2 except the Menominee Indian tribe of Wisconsin, that includes notice to the
3 respondent that he or she is subject to the requirements and penalties under s.
4 941.29 and that has been filed with the circuit court under s. 813.128 (3g), and a
5 search to determine whether the person is prohibited from possessing a firearm
6 under s. 813.123 (5m) or 813.125 (4m).

7 **SECTION 5.** 175.35 (1) (b) of the statutes is repealed.

8 **SECTION 6.** 175.35 (1) (br) of the statutes is created to read:

9 175.35 (1) (br) "Transfer" includes to sell, assign, pledge, lease, loan, give away,
10 or otherwise dispose of.

11 **SECTION 7.** 175.35 (2) (intro.) of the statutes is renumbered 175.35 (2) (am) and
12 amended to read:

13 175.35 (2) (am) When a firearms dealer ~~sells~~ transfers a handgun firearm,
14 including the frame or receiver of a firearm, he or she may not transfer possession
15 of that handgun firearm to any other person until all of the ~~following have occurred:~~
16 requirements under par. (cm) have been met.

17 **SECTION 8.** 175.35 (2) (a), (b), (c) and (d) of the statutes are renumbered 175.35
18 (2) (cm) 1., 2., 3. and 4.

19 **SECTION 9.** 175.35 (2) (bm) of the statutes is created to read:

20 175.35 (2) (bm) When a person transfers a firearm, including the frame or
21 receiver of a firearm, through a firearms dealer, the transfer of possession of that
22 firearm may not be made until all of the requirements of par. (cm) have been met.

23 **SECTION 10.** 175.35 (2) (cm) (intro.) of the statutes is created to read:

24 175.35 (2) (cm) (intro.) All of the following must have occurred before a transfer
25 of a firearm occurs under par. (am) or (bm):

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1 **SECTION 11.** 175.35 (2g) (a) of the statutes is amended to read:

2 175.35 **(2g)** (a) The department of justice shall promulgate rules prescribing
3 procedures for use under sub. (2) (cm) 1. for a transferee to provide and a firearms
4 dealer to inspect identification containing a photograph of the transferee.

5 **SECTION 12.** 175.35 (2g) (b) 1. of the statutes is amended to read:

6 175.35 **(2g)** (b) 1. The department of justice shall promulgate rules prescribing
7 a notification form for use under sub. (2) (cm) 2. and 3. requiring the transferee to
8 provide his or her name, date of birth, gender, race and social security number and
9 other identification necessary to permit an accurate firearms restrictions record
10 search under par. (c) 3. and the required notification under par. (c) 4. The department
11 of justice shall make the forms available at locations throughout the state.

12 **SECTION 13.** 175.35 (2g) (b) 2. of the statutes is amended to read:

13 175.35 **(2g)** (b) 2. The department of justice shall ensure that each notification
14 form under subd. 1. requires the transferee to indicate that he or she is not
15 ~~purchasing~~ receiving a transfer of the firearm with the purpose or intent to transfer
16 the firearm to a person who is prohibited from possessing a firearm under state or
17 federal law and that each notification form informs the transferee that making a
18 false statement with regard to this purpose or intent is a Class H felony.

19 **SECTION 14.** 175.35 (2i) of the statutes is renumbered 175.35 (2i) (a) and
20 amended to read:

21 175.35 **(2i)** (a) The department shall charge a firearms dealer a \$10 fee for each
22 firearms restrictions record search that the firearms dealer requests under sub. (2)
23 ~~(e)~~ (cm) 3.

24 (b) 1. The firearms dealer may collect the fee under par. (a) from the transferee.

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1 (c) The department may refuse to conduct firearms restrictions record searches
2 for any firearms dealer who fails to pay any fee under ~~this subsection~~ par. (a) within
3 30 days after billing by the department.

4 **SECTION 15.** 175.35 (2i) (b) 2. of the statutes is created to read:

5 175.35 **(2i)** (b) 2. If the transfer is made under sub. (2) (bm), the firearms dealer
6 may collect from the transferor the fee under par. (a) and any additional amount to
7 cover any costs he or she incurs in processing the transfer.

8 **SECTION 16.** 175.35 (2j) of the statutes is renumbered 175.35 (2j) (a).

9 **SECTION 17.** 175.35 (2j) (b) of the statutes is created to read:

10 175.35 **(2j)** (b) If a person transfers a firearm through a firearms dealer under
11 sub. (2) (bm), or transfers a firearm to a firearms dealer, the firearms dealer shall
12 provide the person a written receipt documenting the dealer's participation in the
13 transfer.

14 **SECTION 18.** 175.35 (2k) (ar) 2. of the statutes is amended to read:

15 175.35 **(2k)** (ar) 2. Check each notification form received under sub. (2j) (a)
16 against the information recorded by the department regarding the corresponding
17 request for a firearms restrictions record search under sub. (2g). If the department
18 previously provided a unique approval number regarding the request and nothing
19 in the completed notification form indicates that the transferee is prohibited from
20 possessing a firearm under s. 941.29, the department shall destroy all records
21 regarding that firearms restrictions record search within 30 days after receiving the
22 notification form.

23 **SECTION 19.** 175.35 (2k) (c) 2. a. of the statutes is amended to read:

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1 175.35 (2k) (c) 2. a. A statement that the Wisconsin law enforcement agency
2 is conducting an investigation of a crime in which a ~~handgun~~ firearm was used or was
3 attempted to be used or was unlawfully possessed.

4 **SECTION 20.** 175.35 (2k) (c) 2. b. of the statutes is amended to read:

5 175.35 (2k) (c) 2. b. A statement by a division commander or higher authority
6 within the Wisconsin law enforcement agency that he or she has a reasonable
7 suspicion that the person who is the subject of the information request has obtained
8 or is attempting to obtain a ~~handgun~~ firearm.

9 **SECTION 21.** 175.35 (2k) (g) of the statutes is amended to read:

10 175.35 (2k) (g) If a search conducted under sub. (2g) indicates that the
11 transferee is prohibited from possessing a firearm under s. 941.29, the attorney
12 general or his or her designee may disclose to a law enforcement agency that the
13 transferee has attempted to obtain a ~~handgun~~ firearm.

14 **SECTION 22.** 175.35 (2k) (h) of the statutes is amended to read:

15 175.35 (2k) (h) If a search conducted under sub. (2g) indicates a felony charge
16 without a recorded disposition and the attorney general or his or her designee has
17 reasonable grounds to believe the transferee may pose a danger to himself, herself
18 or another, the attorney general or his or her designee may disclose to a law
19 enforcement agency that the transferee has obtained or has attempted to obtain a
20 ~~handgun~~ firearm.

21 **SECTION 23.** 175.35 (2L) of the statutes is amended to read:

22 175.35 (2L) The department of justice shall promulgate rules providing for the
23 review of nonapprovals under sub. (2g) (c) 4. a. Any person who is denied the right
24 to ~~purchase~~ receive a transfer of a ~~handgun~~ firearm because the firearms dealer
25 received a nonapproval number under sub. (2g) (c) 4. a. may request a firearms

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1 restrictions record search review under those rules. If the person disagrees with the
2 results of that review, the person may file an appeal under rules promulgated by the
3 department.

4 **SECTION 24.** 175.35 (2t) (a), (b) and (c) of the statutes are amended to read:

5 175.35 **(2t)** (a) Transfers of any ~~handgun~~ firearm classified as an antique by
6 regulations of the U.S. department of the treasury.

7 (b) Transfers of any ~~handgun~~ firearm between firearms dealers or between
8 wholesalers and dealers.

9 (c) Transfers of any ~~handgun~~ firearm to law enforcement or armed services
10 agencies.

11 **SECTION 25.** 175.35 (3) (b) 2. of the statutes is amended to read:

12 175.35 **(3)** (b) 2. A person who violates sub. (2e) by intentionally providing false
13 information regarding whether he or she is ~~purchasing~~ receiving a transfer of the
14 firearm with the purpose or intent to transfer the firearm to another who the person
15 knows or reasonably should know is prohibited from possessing a firearm under
16 state or federal law is guilty of a Class H felony. The penalty shall include a fine that
17 is not less than \$500.

18 **SECTION 26.** 175.60 (7) (d) of the statutes is amended to read:

19 175.60 **(7)** (d) A fee for a background check that is equal to the fee charged under
20 s. 175.35 (2i) (a).

21 **SECTION 27.** 175.60 (15) (b) 4. b. of the statutes is amended to read:

22 175.60 **(15)** (b) 4. b. A fee for a background check that is equal to the fee charged
23 under s. 175.35 (2i) (a).

24 **SECTION 28.** 938.208 (1) (b) of the statutes is amended to read:

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1 938.208 (1) (b) Probable cause exists to believe that the juvenile possessed,
2 used or threatened to use a handgun, as defined in s. ~~175.35 (1) (b)~~ 941.237 (1) (d),
3 short-barreled rifle, as defined in s. 941.28 (1) (b), or short-barreled shotgun, as
4 defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony
5 under ch. 940 if committed by an adult.

6 **SECTION 29.** 938.34 (4m) (b) 2. of the statutes is amended to read:

7 938.34 (4m) (b) 2. The juvenile has possessed, used or threatened to use a
8 handgun, as defined in s. ~~175.35 (1) (b)~~ 941.237 (1) (d), short-barreled rifle, as
9 defined in s. 941.28 (1) (b), or short-barreled shotgun, as defined in s. 941.28 (1) (c),
10 while committing a delinquent act that would be a felony under ch. 940 if committed
11 by an adult.

12 **SECTION 30.** 938.341 of the statutes is amended to read:

13 **938.341 Delinquency adjudication; restriction on firearm possession.**
14 Whenever a court adjudicates a juvenile delinquent for an act that if committed by
15 an adult in this state would be a felony or for a violation under s. 175.33 (2), the court
16 shall inform the juvenile of the requirements and penalties under s. 941.29.

17 **SECTION 31.** 941.237 (1) (d) of the statutes is amended to read:

18 941.237 (1) (d) “Handgun” ~~has the meaning given in s. 175.35 (1) (b)~~ means any
19 weapon designed or redesigned, or made or remade, and intended to be fired while
20 held in one hand and to use the energy of an explosive to expel a projectile through
21 a smooth or rifled bore.

22 **SECTION 32.** 941.29 (1m) (dm), (dn) and (do) of the statutes are created to read:

23 941.29 (1m) (dm) The person has been convicted of a misdemeanor under s.
24 175.33 (2), unless at least 2 years have passed since the conviction.

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

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

6 **SECTION 33.** 941.296 (1) (b) of the statutes is amended to read:

7 941.296 (1) (b) "Handgun" has the meaning given in s. ~~175.35 (1) (b)~~ 941.237
8 (1) (d).

9 **SECTION 34.** 968.20 (3) (b) of the statutes is amended to read:

10 968.20 (3) (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village,
11 town or county or other custodian of a seized dangerous weapon or ammunition, if
12 the dangerous weapon or ammunition is not required for evidence or use in further
13 investigation and has not been disposed of pursuant to a court order at the
14 completion of a criminal action or proceeding, shall make reasonable efforts to notify
15 all persons who have or may have an authorized rightful interest in the dangerous
16 weapon or ammunition of the application requirements under sub. (1). If, within 30
17 days after the notice, an application under sub. (1) is not made and the seized
18 dangerous weapon or ammunition is not returned by the officer under sub. (2), the
19 city, village, town or county or other custodian may retain the dangerous weapon or
20 ammunition and authorize its use by a law enforcement agency, except that a
21 dangerous weapon used in the commission of a homicide or a handgun, as defined
22 in s. ~~175.35 (1) (b)~~ 941.237 (1) (d), may not be retained. If a dangerous weapon other
23 than a firearm is not so retained, the city, village, town or county or other custodian
24 shall safely dispose of the dangerous weapon or, if the dangerous weapon is a motor
25 vehicle, as defined in s. 340.01 (35), sell the motor vehicle following the procedure

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1 under s. 973.075 (4). If a firearm or ammunition is not so retained, the city, village,
2 town or county or other custodian shall ship it to the state crime laboratories and it
3 is then the property of the laboratories. A person designated by the department of
4 justice may destroy any material for which the laboratories have no use or arrange
5 for the exchange of material with other public agencies. In lieu of destruction,
6 shoulder weapons for which the laboratory has no use shall be turned over to the
7 department of natural resources for sale and distribution of proceeds under s. 29.934
8 or for use under s. 29.938.

9 **SECTION 35.** 971.17 (1g) of the statutes is amended to read:

10 971.17 **(1g)** NOTICE OF RESTRICTION ON FIREARM POSSESSION. If the defendant
11 under sub. (1) is found not guilty of a felony, or of a violation under s. 175.33 (2), by
12 reason of mental disease or defect, the court shall inform the defendant of the
13 requirements and penalties under s. 941.29.

14 **SECTION 36.** 973.176 (1) of the statutes is amended to read:

15 973.176 **(1)** FIREARM POSSESSION. Whenever a court imposes a sentence or
16 places a defendant on probation regarding a felony conviction or regarding a
17 conviction for a misdemeanor under s. 175.33 (2), the court shall inform the
18 defendant of the requirements and penalties applicable to him or her under s. 941.29
19 (1m) or (4m).

20 **SECTION 37. Effective date.**

21 (1) This act takes effect on the first day of the 7th month beginning after
22 publication.

23 (END)