



WISCONSIN LEGISLATIVE COUNCIL

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TO: SENATOR PAM GALLOWAY

FROM: Anne Sappenfield, Senior Staff Attorney

RE: 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 22, 2011

This memorandum, prepared at your request, describes the major provisions of 2011 Senate Bill 93, relating to going armed with a weapon; possessing or transporting a firearm, bow, or crossbow under certain circumstances; disorderly conduct limitations; and electric weapons, in a question and answer format. For a more thorough description of Senate Bill 93, as passed by the Senate and the Assembly, please see the Amendment Memo on Senate Substitute Amendment 2 to the bill at www.legis.state.wi.us/lc.

The Senate passed Senate Bill 93 on June 14, 2011 and the Assembly passed the bill on June 21, 2011.

Senate Bill 93 creates a license to carry a concealed weapon and makes various changes to current firearms statutes.

Licenses to Carry a Concealed Weapon

Who issues the licenses?

The licenses are issued by the Department of Justice (DOJ).

Can a person from another state carry a concealed weapon in Wisconsin?

Yes. The bill permits out-of-state licensees to carry concealed weapons in Wisconsin under the same restrictions that apply to persons licensed by Wisconsin.

DOJ must 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.

“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.

Can a Wisconsin resident carry a concealed weapon in Wisconsin using a license he or she received from another state?

No. A Wisconsin resident must obtain a Wisconsin license to carry a concealed weapon in Wisconsin.

What is the definition of “weapon”?

The bill defines “weapon” as a handgun, an electric weapon, a knife other than a switchblade, or a billy club.

Is a licensee or out-of-state licensee required to show a law enforcement officer his or her license?

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 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.

Who is qualified to be issued a license?

Under the bill, DOJ must issue a license to carry a concealed weapon to an individual who submits an application, as required under the bill, ***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.

What are the training requirements to receive a license?

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: (a) 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; (b) a firearms safety or training course that is conducted by a national or state organization that certifies firearms instructors; (c) 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; (d) 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; or (e) 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 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.

DOJ may not require firing live ammunition to meet the training requirements.

Is DOJ required to conduct a background check on a person applying for a license?

Yes. The bill specifies that the DOJ must conduct a background check by using the Transaction Information for Management of Enforcement System ("TIME system") and the National Instant

Criminal Background Check System (NICS). The TIME system is a computer-based data communications control center managed by the Wisconsin Crime Information Bureau that can access data in files at the national, state, and local levels to obtain information on warrants, criminal histories, driver license information, protection order and injunction files, sex offender and corrections information, among other items. The NICS is a national system that checks records in the National Crime Information Center System (a computerized index of criminal justice information managed by the Federal Bureau of Investigation that includes information on topics such as criminal records, fugitives, stolen property, and missing persons), the Interstate Identification Index, and the NICS Index to determine whether an individual is eligible to purchase a firearm

Could a person receive an emergency license to carry a concealed weapon?

Yes. 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.

Do law enforcement officers have access to information about licensees?

Yes, but they may only access this information under specified circumstances. Specifically, a law enforcement officer may request or be provided information concerning a specific individual only 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 violates this provision may be fined not more than \$500 or imprisoned for not more than 30 days, or both.

What if a licensee becomes ineligible to hold a license because he or she is convicted of a felony, for example?

DOJ must 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 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.

Could someone challenge DOJ's finding that the person is not qualified to receive a license?

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

The bill 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: (a) that DOJ failed to follow any procedure, or take any action, prescribed under the license law; (b) that DOJ erroneously interpreted a provision of law and a correct interpretation compels a different action; (c) that DOJ's action depends on a finding of fact that is not supported by substantial evidence in the record; (d) if the appeal is regarding a denial, that the denial was based on factors other than the factors set forth under the bill relating to eligibility for a license; or (e) 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 bill 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.

How long does a license remain in effect?

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:

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 bill, 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.

Can an employer prohibit his or her employees from carrying a concealed weapon at work?

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.

Are there places where a licensee is not permitted to carry a concealed weapon?

Yes. Under the bill, 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.

The bill also prohibits any person, including a licensee, from entering or remaining on certain types of property while carrying a weapon after being notified by the owner or occupant not to do so. Under the bill, 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 bill 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 bill 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.

Does the bill provide immunity from liability for certain decisions or actions that may be made under the bill?

The bill provides immunity to various persons, as follows:

- Agencies responsible for issuing licenses or providing information related to licensure and their employees are immune from liability arising from any act or omission under the bill, 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.

Does the bill create penalties for law enforcement officers in relationship to licensees or licenses?

The bill contains penalties for an officer who maintains or discloses information he or she receives relating to an individual licensee or requests to be provided with information concerning an individual licensee for a purpose that is not authorized under the bill. The penalty for these offenses is a fine of not more than \$500 or imprisonment for not more than 30 days, or both. Also, under the bill, 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.

Crimes Against Carrying Weapons

Could a person be charged with disorderly conduct for carrying a weapon?

Under some circumstances. The bill 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.

Does the bill repeal the current crimes of carrying a concealed weapon, carrying a firearm in a public building, and carrying a handgun where alcohol beverages are sold and consumed?

No. The bill creates exceptions to these offenses for licensees and out-of-state licensees. For carrying a handgun where alcohol beverages are sold and consumed, a licensee or out-of-state licensee is exempt only if he or she is not consuming alcohol on the premises. The bill also exempts qualified law enforcement officers and former law enforcement officers who meet the requirements set forth in the bill from these prohibitions.

Is a licensee or out-of-state licensee exempted from the current prohibition against possessing an electric weapon?

Yes. In addition, 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 is exempt from this provision under the bill.

Gun-Free School Zones

Does the bill change the penalty for possessing a firearm in a school zone?

Under the bill, the penalty is the same (Class I felony) for possessing a firearm in or on the grounds of a school. Under the bill the penalty is lower (Class B forfeiture) if a person possesses 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.

Could a licensee possess a firearm in a school?

Under the bill, a licensee may not possess a firearm in or on the grounds of a school unless he or she meets another exception under the statute.

Other Firearm Provisions

Does the bill change current law relating to discharging a firearm?

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 bill 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 bill 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.

Could a person open carry in a vehicle under the bill?

Yes. The bill 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 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.

Could a licensee carry a firearm in a wildlife refuge or state park under the bill?

The bill 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.

The bill also 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.

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

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