



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR MARK MILLER
FROM: Anne Sappenfield, Senior Staff Attorney
RE: 2011 Senate Bills 90 and 93 and 2005 Senate Bill 403, Relating to Carrying a Concealed Weapon
DATE: May 18, 2011

This memorandum, prepared at your request, describes the major provisions of 2011 Senate Bills 90 and 93 and 2005 Senate Bill 403, all of which relate to carrying a concealed weapon. Specifically, the memorandum discusses the following provisions of the bills: (a) the crime against carrying a concealed weapon; (b) who may carry a concealed weapon with a license issued by Wisconsin or by virtue of having a right to carry; (c) issuance of emergency license; (d) where concealed weapons may be carried; and (e) gun-free school zones. The memorandum does not describe changes the bills would make to laws regarding carrying a weapon in a vehicle, motor boat, or all-terrain vehicle; changes to hunting laws; or provisions that are specific to qualified law enforcement officers and qualified retired law enforcement officers.

2011 Senate Bill 90 was introduced by Senator Galloway, and others; cosponsored by Representative Mursau, and others, on May 10, 2011. The bill creates a process whereby persons may apply for and receive a license to carry a concealed weapon.

2011 Senate Bill 93 was introduced by Senator Galloway, and others; cosponsored by Representative Mursau, and others, on May 10, 2011. The bill permits persons to carry a concealed weapon, with some exceptions, but does not require a person to first obtain a license.

2005 Senate Bill 403 also would have created a process whereby persons may apply for and receive a license to carry a concealed weapon. Senate Bill 403 was vetoed by Governor Doyle.

CRIME AGAINST CARRYING A CONCEALED WEAPON

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. [s. 941.23, Stats.]

Senate Bill 90

Under Senate Bill 90, a person licensed to carry a concealed weapon is exempt from the general prohibition against carrying a concealed weapon.

Senate Bill 93

Senate Bill 93 repeals the current statute prohibiting a person from going armed with a concealed and dangerous weapon.

2005 Senate Bill 403

Senate Bill 403 contained the same exemption to the prohibition against carrying a concealed weapon as is contained in Senate Bill 90.

WHO MAY CARRY A CONCEALED WEAPON

Senate Bill 90

Under Senate Bill 90, the Department of Justice (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 is not a Wisconsin resident.

Senate Bill 93

Senate Bill 93 does not contain qualifications for eligibility to carry a concealed weapon. However, as noted above, certain individuals are prohibited from possessing a firearm under current federal and state law.

2005 Senate Bill 403

Senate Bill 403 contained the same eligibility requirements as Senate Bill 90. In addition, under Senate Bill 403, an individual could be issued a license to carry a concealed weapon if the person satisfied all of the following criteria:

- The individual does not have a severe physical disability that prevents him or her from safely handling a weapon and that, if the individual were handling a weapon, would cause the individual to pose a significant public safety risk. DOJ was required to promulgate rules to implement this provision.

- During the preceding three years, the individual has not been committed under ch. 51, Stats., for being drug dependent.
- During the preceding three years, the individual has not been convicted for any violation, or the solicitation, conspiracy, or attempt to commit any controlled substances violation.
- The individual does not chronically and habitually use alcohol beverages or other substances to the extent that his or her normal faculties are impaired.
- The individual has done one of the following:
 - Successfully completed a firearm training or firearm safety course or class that meets the requirements of the bill.
 - Been certified as an instructor of a firearm training or firearm safety course or class, as described in the bill.
 - Participated in organized shooting competitions or military, law enforcement, or security training that gave the applicant experience with firearms that DOJ determines is substantially equivalent to any course or class that meets the requirements under the bill.
- The individual has not been found incompetent under ch. 880, Stats., or, if the individual has been found incompetent, he or she was subsequently found to be competent and at least five years have elapsed from the date that he or she was found to be competent.
- The individual was not the subject of a protective placement under s. 55.06, Stats., as a minor unless at least five years have elapsed from the date on which his or her protective placement ended.
- The individual has not been involuntarily committed for treatment under s. 51.20, Stats., due to mental illness or a developmental disability or, if the individual has been involuntarily committed for treatment, he or she shows, through evidence from a psychiatrist that he or she has not been disabled due to mental illness or a developmental disability for at least five years.
- The individual has not been found incompetent in a criminal proceeding under s. 971.14, Stats., or, if the individual has been found incompetent, one of the following applies:
 - He or she was subsequently found to be competent and at least five years have elapsed since the date that he or she was found to be competent.
 - He or she was not subsequently found to be competent and he or she shows, through evidence from a psychiatrist, that he or she has not been disabled due to mental illness or a developmental disability for at least five years.
- The individual has not been found not guilty by reason of mental disease or defect or, if the individual has been found not guilty by reason of mental disease or defect, he or she presents

evidence from a psychiatrist that he or she has not been disabled due to mental illness or a developmental disability for at least five years.

- Within the preceding three years, the individual was not convicted of a misdemeanor crime of violence or was not serving a sentence, on probation, or subject to a juvenile delinquency dispositional order for committing a misdemeanor crime of violence.
- The individual has not been charged with a felony or misdemeanor crime of violence for which the prosecution was suspended under a deferred prosecution agreement unless three years have elapsed since the date of the agreement.
- The individual is not the subject of any pending civil or criminal case, the disposition of which could disqualify him or her from having a license to carry a concealed weapon.
- The individual has not previously submitted an application for a license to carry a concealed weapon and had the application denied, unless each reason for the denial is no longer applicable because of changed circumstances or, if the denial was based on a restriction that applies for a specified period of time, because that time period has run.
- The individual has not had a license to carry a concealed weapon that was issued revoked, unless the reason for the revocation is no longer applicable because of changed circumstances or, if the revocation was based on a restriction that applies for a specified period of time, because that time period has run.
- The individual has not been convicted of an offense relating to licenses to carry a concealed weapon.

EMERGENCY LICENSES

Senate Bill 90

Under Senate Bill 90, an individual who requires an immediate license to carry a concealed weapon 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.

Senate Bill 93

Senate Bill 93 does not include a provision for an emergency license because the bill does not contain licensure requirements.

2005 Senate Bill 403

Under Senate Bill 403, unless DOJ knew that a person was not qualified for a license for a reason other than not having received required firearms training, DOJ could issue a license to an individual who did not meet the training requirements if DOJ determined that immediate licensure was warranted to protect the individual from death or great bodily harm. If DOJ issued a license under this procedure, DOJ would have been required to conduct an immediate background check.

A license issued under this provision would have been valid for 120 days and could not be renewed. DOJ was required to revoke such a license if DOJ learned that an individual did not qualify for a license to carry a concealed weapon.

The bill permitted DOJ to waive fees for an individual applying for a license under this procedure if requiring the individual to pay the fees would create a hardship for the individual.

WHERE A CONCEALED WEAPON MAY BE CARRIED

Senate Bill 90

Under Senate Bill 90, a licensee may carry a concealed weapon or a weapon that is not concealed anywhere on publicly owned property and in publicly owned buildings in Wisconsin, except as described below.

A licensee may not knowingly carry a concealed weapon, a weapon that is not concealed, or a firearm that does not meet the definition of "weapon"* in any of the following:

- Any portion of a building that is a police station, sheriff's office, or state patrol station.
- A prison, jail, house of correction, or secured correctional facility.
- A county, state, or federal courthouse.
- 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, whom a judge has permitted in writing to carry a weapon, is carrying a weapon.
- A weapon in a courthouse if a district attorney, or an assistant district attorney, who is a licensee is carrying a weapon.

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

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 provides that a person is guilty of a Class C misdemeanor if he or she, while carrying a firearm, 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 with that type of firearm. This provision does not apply to the governmental buildings in which a licensee is prohibited from carrying a concealed weapon, as described above. 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.

The bill also amends current prohibitions against trespass to permit certain owners and occupants of property to prohibit persons from carrying a concealed weapon in or on the property. Under the bill, a person may be charged with a Class B forfeiture if he or she 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 bill, "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.

Also under the bill, a person, while carrying a firearm, may not enter or remain in any part of a nonresidential building that the person does not own or occupy after the owner of the building, if that part of the building has not been leased to another person, or the occupant of that part of the building has notified the person not to enter or remain in that part of the building while carrying a firearm or with that type of firearm. This provision does not apply to a part of a building occupied by the state or by a local governmental unit 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. This offense is punishable as a Class B forfeiture.

For these provisions, the bill specifies that "nonresidential building" includes any privately or publicly owned building on the grounds of a university or college.

In order to give notice under the above provisions relating to nonresidential buildings, an owner or occupant of a part of a nonresidential building or the state or local governmental unit 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. The sign must be at least 8.5 inches by 11 inches and colored orange.

Provisions specific to carrying a firearm in a school zone are discussed below.

Senate Bill 93

Under Senate Bill 93, it is a Class C misdemeanor to carry a concealed weapon into any of the places a licensee may not carry a concealed weapon under Senate Bill 90 (e.g., a police station, prison, or courthouse). The same exceptions to these prohibitions apply as well. In addition, under the bill, if a

building owned or leased by the state or any political subdivision of the state provides electronic screening for weapons or firearms that are not weapons, as defined in the bill, at all public entrances to the building and provides locked storage for weapons and firearms that are not weapons on the premises while the person carrying the weapon or firearm is in the building, it is a Class C misdemeanor under the bill to carry a concealed weapon beyond the electronic screening.

Senate Bill 93 contains the same provisions relating to trespass on residential property and in nonresidential buildings as contained in Senate Bill 90. Governmental buildings are not addressed in the trespass statute under the bill.

2005 Senate Bill 403

Under Senate Bill 403, a licensee could not knowingly carry a concealed weapon in any of the following places:

- A place that has been declared a nuisance.
- A police station, sheriff's office, or state patrol station.
- A prison, jail, house of correction, or secured correctional facility.
- A courthouse, except a judge who is a licensee may carry a concealed weapon in a courthouse in which he or she is presiding in court and may permit in writing any other licensee to carry a concealed weapon in a courthouse in which he or she is presiding in court.
- A place at which a school, college, or professional athletic event is taking place, unless the event is related to firearms and the licensee is a participant in the event.
- A school administration building.
- Any premises for which a Class "B" or "Class B" alcohol license or permit has been issued unless one of the following applies:
 - The licensee or the circumstances under which the licensee is carrying are exempt from the crime of carrying a concealed weapon in a tavern under s. 941.237, Stats.
 - The sale of intoxicating liquors or beer or both on those premises accounts for not more than 50% of the proprietor's annual gross receipts from those premises.
- In or beyond a security checkpoint in an airport, unless the weapon is encased for shipment as baggage to be transported by aircraft.
- A place in which carrying the weapon is prohibited by federal law.
- A kindergarten facility or classroom.

Under the bill, a licensee could not carry a concealed weapon in a building owned or leased by the state or a political subdivision if the building provided electronic screening for weapons at all public

entrances to the building and for locked storage of weapons on the premises while the licensee was in the building. This provision did not apply to:

- Peace officers or armed forces or military personnel who go armed in the line of duty.
- A person authorized to carry a weapon in the building by the chief of police of the city, village, or town or the sheriff of the county in which the building is located.
- A person authorized to carry a weapon in the building by the chief of the Capitol Police if the building is owned or leased by the state.

GUN-FREE SCHOOL ZONES

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 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. [s. 948.605 (2), Stats.]

Senate Bill 90

Senate Bill 90 repeals all the conditions under which an individual is not prohibited from possessing a firearm in a school zone except the following:

- 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.

Instead, under the bill, the offense of possessing a firearm in a school zone does not apply to possession of a firearm by any of the following:

- An individual may possess a firearm in accordance with the following provisions of federal law which are cross-referenced in the bill:
 - On private property not part of school grounds.
 - The firearm is: (a) not loaded; and (b) in a locked container or 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 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.
- Except if the person is in or on the grounds of a school, a person who possesses the firearm is licensed to do so by the state in which the school zone is located or a political subdivision of the state, and the law of the state or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the state or political subdivision verify that the individual is qualified under law to receive the license. This provision also cross-references federal law and further provides that, for purposes of this provision, a licensee is fully licensed under the laws of this state.

Senate Bill 93

Under Senate Bill 93, 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 on the grounds of a school, instead of a school zone. The bill contains the same exceptions to this offense as contained in Senate Bill 90.

2005 Senate Bill 403

Senate Bill 403 provided that the current prohibition relating to possessing a firearm in a school zone would not apply to the following:

- A law enforcement officer, qualified out-of-state law enforcement officer, or retired Wisconsin law enforcement officer permitted to carry a concealed weapon under the bill.
- A licensee if the firearm is a handgun.

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

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