

2003 SENATE BILL 214

July 22, 2003 – Introduced by Senators ZIEN, WELCH, BROWN, PANZER, A. LASEE, S. FITZGERALD, SCHULTZ, STEPP, REYNOLDS, KANAVAS, LEIBHAM, KEDZIE and ROESSLER, cosponsored by Representatives GUNDERSON, SUDER, PETTIS, ALBERS, BIES, J. FITZGERALD, FREESE, GROTHMAN, GUNDRUM, HAHN, HINES, HUEBSCH, HUNDERTMARK, JENSEN, KERKMAN, KESTELL, LADWIG, F. LASEE, M. LEHMAN, LEMAHIEU, LOEFFELHOLZ, LOTHIAN, MCCORMICK, MUSSER, NASS, NISCHKE, OWENS, PETROWSKI, SCHNEIDER, SERATTI, SHERMAN, STONE, TOWNS, VAN ROY, VRAKAS, VUKMIR and WEBER. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT to renumber and amend** 29.091, 29.621 (4), 941.23 and 941.235 (2); *to*
 2 **amend** 23.33 (3) (e), 25.29 (1) (a), 29.089 (2), 165.82 (2) and 440.26 (3m); and
 3 **to create** 20.370 (5) (csr), 20.455 (2) (gp), 29.091 (2), 29.594, 29.621 (4) (b), 59.25
 4 (3) (u), 167.31 (4) (ar), 175.50, 941.23 (1) (a), 941.23 (1) (b), 941.23 (2), 941.235
 5 (2) (c), 941.235 (2) (d), 941.237 (3) (ct), 941.295 (2) (f), 941.295 (2) (g), 946.32 (3),
 6 948.605 (2) (c) and 948.61 (3m) of the statutes; **relating to:** carrying or going
 7 armed with a concealed weapon, requiring the exercise of rule-making
 8 authority, making appropriations, and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, no person other than a peace officer may go armed with a concealed and dangerous weapon. The “going armed with” language applies to, among others, cases in which a person is carrying a concealed weapon but has not gone and is not going anywhere and cases in which a weapon is readily accessible to — but not physically carried by — a person in a car. A person who violates the prohibition on going armed with a concealed and dangerous weapon may be fined not more than \$10,000 or imprisoned for not more than nine months or both. But under *State v. Hamdan*, 2003 WI 113, __ Wis. 2d __, it is unconstitutional to apply this prohibition to a person carrying a concealed weapon at his or her own business when:

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1) the need to exercise this right is substantial; 2) the person has no other reasonable means to keep and handle the weapon; and 3) the person was not motivated by an unlawful purpose in concealing it.

In addition, current law prohibits, with certain exceptions, going armed with or possessing a firearm in a number of places, such as in a public building, tavern, state park, or wildlife refuge or within 1,000 feet of the grounds of a school. Current law also prohibits, with certain exceptions, carrying a loaded or unencased firearm in an automobile, motorboat, or airplane. A person who violates one of these prohibitions is subject to civil or criminal penalties.

This bill permits a person to go armed with a concealed and dangerous weapon in his or her own home or place of business or on land that he or she owns, leases, or legally occupies, unless the person is prohibited under federal or state law from possessing a firearm (prohibitions that apply if, for example, the person has been convicted of a misdemeanor crime of domestic violence or a felony; the person unlawfully uses a controlled substance; the person has been committed to a mental health facility; or the person is subject to a stalking, harassment, or domestic violence restraining order).

This bill also creates a procedure by which a person may apply to a county sheriff for a license to carry a concealed weapon more generally. The license authorizes a person to carry (defined in the bill to mean to go armed with) a concealed weapon (defined in the bill as a handgun, a stungun, a tear gas gun, a knife other than a switchblade, or a billy club) anywhere in this state except in particular places specified in the bill. These specified places include a police station, a sheriff's office, a state patrol station, a prison, a jail, a tavern (unless: 1) the person owns or manages the tavern; 2) the person is otherwise authorized to possess a handgun at the tavern; or 3) the sale of alcohol accounts for no more than 50% of the tavern's receipts), a school administration building, an airport, and any place in which the carrying of a weapon is prohibited by federal law. The bill also exempts licensees from the prohibition on possessing firearms in a school zone under certain circumstances. Specifically, the bill authorizes a licensee to carry a handgun in a school zone if: 1) the licensee is in a motor vehicle or on a snowmobile or bicycle; 2) the licensee has exited from a motor vehicle and is encasing the handgun or storing it in the motor vehicle; or 3) the licensee is traveling directly between any two of the following places: any person's private property, the licensee's place of employment or business, or a place outside of the school zone. This exemption does not apply if the licensee is on the school grounds. At the same time, the bill lowers the penalty for licensees carrying handguns in a school zone or on school grounds or carrying electric weapons, tear gas guns, knives, or billy clubs on school grounds.

Under the bill, a county sheriff must issue a license to carry a concealed weapon to a person who meets the qualifications established in the bill for the license unless the county board of the sheriff's county decides by a two-thirds vote, taken before the fourth month after the bill becomes law, to authorize the sheriff not to issue concealed weapons licenses. The county board's vote does not prohibit the sheriff from issuing licenses; he or she may still choose to do so. The bill also allows two or more sheriffs to enter into cooperative agreements under which the sheriffs may jointly issue

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licenses to carry a concealed weapon or exercise their other responsibilities under the bill.

The bill specifies the requirements that a person must satisfy in order to qualify for a license to carry a concealed weapon. Included among the requirements that a person must satisfy are the following: 1) he or she must be at least 21 years old; 2) he or she does not have a physical disability that prevents him or her from safely handling a weapon; 3) he or she must be eligible to possess a firearm under federal law; 4) he or she must not be prohibited from possessing a firearm due to a felony conviction, a juvenile delinquency adjudication, an order issued in a civil mental commitment case, or any other order prohibiting the person from possessing a firearm; 5) he or she must not have been committed for the treatment of drug dependency during the preceding three years; 6) he or she must not have been convicted of an offense relating to controlled substances during the preceding three years; 7) he or she must not chronically or habitually use alcohol or other substances to the extent that his or her normal faculties are impaired; 8) he or she must have successfully completed one of several specified firearms training or safety classes; 9) he or she must not have been subject to a finding of incompetency, found not guilty of a crime by reason of mental disease or mental defect, or involuntarily committed for treatment of mental illness during the preceding five years; 10) he or she must not have been convicted of one of a set of specified misdemeanors involving violence or serving a sentence for committing such a misdemeanor within the preceding three years; and 11) he or she must be a Wisconsin resident. In addition, the bill requires a sheriff to conduct a background check of a person who applies for a license to carry a concealed weapon to help determine the person's eligibility for a license. The background check requirement does not apply to a person applying for a license if the person is a law enforcement officer, a correctional officer, a probation and parole agent, or a person holding a current certification from the law enforcement standards board.

In addition, the bill does all of the following:

1. Allows a sheriff to issue an emergency license to an individual if the sheriff determines that immediate licensure is warranted to protect the individual from death or great bodily harm.
2. Provides that a license to carry a concealed weapon is valid for five years and establishes a renewal procedure that includes a background check of the person renewing the license.
3. Requires a sheriff to revoke a license to carry a concealed weapon if the licensee no longer meets all of the requirements for licensure.
4. Requires a sheriff to suspend a license to carry a concealed weapon if the licensee is the subject of a civil or criminal case that may ultimately lead to the revocation of the license or, after being charged with a misdemeanor, is ordered by the court not to possess a firearm.
5. Provides that a person whose application for a license is denied or whose license is suspended or revoked by the sheriff may appeal the sheriff's action to circuit court for review by a judge.

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6. Specifies the information that must be on a license to carry a concealed weapon and an application for such a license and requires the Department of Justice (DOJ) to design the form of the license and the license application and renewal forms.

7. Requires the sheriff to provide information to DOJ concerning a person licensed to carry a concealed weapon, and requires DOJ to keep a computerized list of persons licensed to carry a concealed weapon. The list kept by DOJ is available only to law enforcement agencies in certain specified circumstances.

8. Requires the clerk of each court to notify the sheriff of court proceedings that would require suspension or revocation of a license.

9. Requires each licensee to notify the sheriff within ten days after being charged with a crime or a drunk driving offense under federal law or the law of another state.

10. Requires a person who applies for a license to carry a concealed weapon to pay an application fee, which may not exceed either the cost to the sheriff of issuing the license or \$75, whichever is less.

11. Requires a person who applies for a license to carry a concealed weapon to pay a shooting range improvement fee, which is to be used by the Department of Natural Resources to provide grants for the construction and improvement of shooting ranges.

12. Requires a person who applies for a license to carry a concealed weapon to pay a law enforcement excellence fund fee, which is to be used by the sheriff to improve law enforcement services in his or her county.

13. Grants immunity from liability to DOJ and its employees, sheriffs and their employees, and persons providing firearm training or safety classes for conduct undertaken in good faith under the bill.

14. Treats a license or permit issued by another state in the same manner as a license issued under this bill.

The bill also establishes the following penalties for offenses relating to licenses to carry a concealed weapon. First, a person who fails to carry his or her license document while carrying a concealed weapon may be required to forfeit \$25. Second, a person who is licensed to carry a concealed weapon and who carries a concealed weapon in a place where the license does not authorize him or her to do so may be fined not more than \$1,000 or imprisoned for not more than 90 days or both. Third, a person who does any of the following shall be fined not less than \$500 nor more than \$10,000 and may be imprisoned for not more than nine months: 1) intentionally makes a false statement in an application for a license; 2) intentionally fails to report being charged under federal law or the law of another state with any crime or any drunk driving offense within ten days after being charged; or 3) intentionally fails to relinquish a license document to a sheriff after the license has been revoked.

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 concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For Immediate Release
August 28, 2003

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RACINE CITY COUNCIL ASKED TO OPPOSE CONCEALED WEAPONS BILLS

Ninth District Alderman Pete Karas today announced that he would submit an advisory resolution to the Racine City Council opposing state legislation that would legalize carrying concealed weapons in Wisconsin. Karas' resolution will be introduced at the City Council meeting to be held on Tuesday, September 2nd.

The resolution is in response to companion bills SB214 and AB444, which have been introduced in the legislature by Rep. Scott Gunderson of Waterford and Sen. Dave Zien of Eau Claire. Local legislators Sen. Cathy Stepp and Rep. Bonnie Ladwig have signed on as co-sponsors of the bills.

The bills would allow individuals to carry concealed weapons anywhere in the state except for a few places specified in the bill. Concealed weapons are defined in the legislation as handguns, stun guns, tear gas guns, knives other than switchblades, and billy clubs

"I oppose any attempt to increase the number of dangerous weapons that we allow in our neighborhoods, or in our public places," said Karas. "Violent crime rates in Wisconsin are very low compared to other states. More guns on the street will not act as a deterrent to the crime that we do have and it is important for the City of Racine to take a stand on this issue."

After the resolution is introduced at the September 2nd Council meeting, it is expected that the Council will refer it to a committee for consideration. Joining Karas as co-sponsors of this resolution are Alderpersons Cherri Cape (District 2), Phyllis Dresen (District 11), John Engel (District 12), Tom Friedel (District 10), Lorna George (District 4), Michael Shields (District 3), and Jim Spangenberg (District 13).

(more)

*Referred to
Committee*

Resolution

Whereas, the Wisconsin State Supreme Court has ruled that prohibiting concealed weapons is a valid restriction, affirming the State law in place since 1874, which prohibits carrying hidden, loaded handguns and which they have said "serves many valuable purposes in promoting public safety."

Whereas, State Senator Dave Zien of Eau Claire and Rep. Scott Gunderson of Waterford have introduced legislation in SB 214 and AB 444 which would allow individuals to carry concealed weapons, defined as a handgun, a stun gun, a tear gas gun, a knife other than a switchblade, or a billy club, anywhere in the State except for those limited and particular places specified in the bill.

Whereas, allowing concealed weapons will hinder the ability of Peace Officers to effectively protect themselves and the people they serve.

Whereas, the State of Wisconsin is relatively safe compared to the states that have passed "shall issue" concealed weapons laws, which generally have, for example, higher violent crime rates, murder rates, rape rates and firearm death rates.

Whereas, studies have shown that "shall issue" concealed weapons laws are more likely to increase crime than decrease crime and that, in particular, evidence links more gun carrying with more deaths.

Whereas polling has shown that less than one in five adults in Wisconsin favor allowing citizens to carry concealed weapons.

Now Therefore, it is resolved that the City of Racine goes on record opposing Senate Bill 214 and Assembly Bill 444 or any other measure that expands the legalization of carrying of concealed weapons.

Let it further be resolved that the City Clerk is directed to send a copy of this resolution to the Governor of the State of Wisconsin, the State Senators representing the 21st and 23th district, the members of the Assembly representing the 61st 62nd 63rd, and 83rd district, the Majority Leaders of the Senate and the Assembly, and the Minority Leaders of the Senate and the Assembly.

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