



2017 SENATE BILL 408

September 14, 2017 - Introduced by Senators DARLING, WANGGAARD, CARPENTER, ERPENBACH and LASEE, cosponsored by Representatives SANFELIPPO, ANDERSON, BRANDTJEN, E. BROOKS, DUCHOW, EDMING, GANNON, KUGLITSCH, RIPP, ROHRKASTE and THIESFELDT. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT to repeal** 941.29 (4); **to renumber** 175.35 (2g) (b); **to renumber and**
2 **amend** 175.35 (3); **to amend** 48.57 (3p) (g) 2., 165.63 (4) (a), 813.1285 (3) (a)
3 1. d., 813.1285 (4) (b) 1. (intro.), 813.1285 (7) (b), 941.29 (1g) (a), 973.12 and
4 976.05 (12); and **to create** 175.35 (2g) (b) 2., 175.35 (3) (b), 175.35 (4), 939.46
5 (3), 939.6195 and 941.2905 of the statutes; **relating to:** furnishing, purchasing,
6 or possessing a firearm for a person who is prohibited from possessing a
7 firearm, mandatory minimum sentences for individuals who commit certain
8 firearm violations, and providing criminal penalties.

Analysis by the Legislative Reference Bureau

This bill creates a crime for purchasing a firearm with the intent to transfer it to a person who is prohibited from possessing a firearm, which is also known as “straw purchasing.” The crime under the bill includes furnishing or possessing a firearm for a prohibited person. Under current law, a person who knowingly furnishes with a firearm a person who is prohibited from possessing a firearm may be convicted of illegal possession of a firearm.

Under current law, a federally licensed firearm dealer may not transfer a handgun to a person until the person has completed a form that the dealer must use to conduct a background check on the person. If a person provides false information

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on the form, the person must be fined not less than \$500 nor more than \$10,000 and may be imprisoned for not more than nine months. This bill increases the penalty to a Class H felony if the false information regards whether the person is purchasing the firearm with the purpose or intent of transferring the firearm to a person who is prohibited from possessing a firearm. This bill authorizes the Department of Justice to prosecute the violation.

This bill also creates an affirmative defense to straw purchasing crimes if the defendant has ever filed a petition for a domestic abuse injunction or a child abuse injunction against the person for whom the defendant was furnishing, purchasing, or possessing the firearm or for whom the defendant provided false information on a firearm form.

Under this bill, a person is subject to a mandatory minimum period of confinement in prison of four years if the person is convicted of illegally possessing a firearm or convicted of another crime involving a firearm and, within five years prior to that conviction, he or she had been convicted of committing either three misdemeanors or one felony. This mandatory minimum sentence requirement expires on July 1, 2022.

For further information see the *state and local* 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.** 48.57 (3p) (g) 2. of the statutes is amended to read:

2 48.57 (**3p**) (g) 2. The person has had imposed on him or her a penalty specified
3 in s. 939.64, 1999 stats., or s. 939.641, 1999 stats., or s. 939.6195, 939.62, 939.621,
4 939.63 or 939.645 or has been convicted of a violation of the law of any other state
5 or federal law under circumstances under which the person would be subject to a
6 penalty specified in any of those sections if convicted in this state.

7 **SECTION 2.** 165.63 (4) (a) of the statutes is amended to read:

8 165.63 (**4**) (a) Enforce or investigate a violation of s. 941.29 or 941.2905.

9 **SECTION 3.** 175.35 (2g) (b) of the statutes is renumbered 175.35 (2g) (b) 1.

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

11 175.35 (**2g**) (b) 2. The department of justice shall ensure that each notification
12 form under subd. 1. requires the transferee to indicate that he or she is not

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1 purchasing the firearm with the purpose or intent to transfer the firearm to a person
2 who is prohibited from possessing a firearm under state or federal law and that each
3 notification form informs the transferee that making a false statement with regard
4 to this purpose or intent is a Class H felony.

5 **SECTION 5.** 175.35 (3) of the statutes is renumbered 175.35 (3) (a) and amended
6 to read:

7 175.35 (3) (a) Any person who intentionally violates sub. (2), ~~(2e)~~, (2f), or (2j)
8 shall be fined not less than \$500 nor more than \$10,000 and may be imprisoned for
9 not more than 9 months.

10 **SECTION 6.** 175.35 (3) (b) of the statutes is created to read:

11 175.35 (3) (b) 1. Except as provided in subd. 2., a person who intentionally
12 violates sub. (2e) shall be fined not less than \$500 nor more than \$10,000 and may
13 be imprisoned for not more than 9 months.

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

19 **SECTION 7.** 175.35 (4) of the statutes is created to read:

20 175.35 (4) The department of justice or the district attorney may institute,
21 manage, control, and direct, in the proper county, a prosecution for a violation of sub.
22 (2e) that is punishable under sub. (3) (b) 2. When prosecuting such a violation, the
23 department of justice shall have and exercise all powers conferred upon district
24 attorneys.

25 **SECTION 8.** 813.1285 (3) (a) 1. d. of the statutes is amended to read:

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1 813.1285 (3) (a) 1. d. The court informs the person to whom the firearm is
2 surrendered of the requirements and penalties under s. ~~941.29 (4)~~ 941.2905.

3 **SECTION 9.** 813.1285 (4) (b) 1. (intro.) of the statutes is amended to read:

4 813.1285 (4) (b) 1. (intro.) If the respondent wants to surrender his or her
5 firearms to a person who is not the sheriff and who appears at the hearing to
6 surrender firearms, and if the court, after considering all relevant factors and input
7 from the petitioner, approves the surrender and informs the person to whom the
8 firearms are surrendered of the requirements and penalties under s. ~~941.29 (4)~~
9 941.2905, order the respondent to surrender his or her firearms in one of the
10 following ways:

11 **SECTION 10.** 813.1285 (7) (b) of the statutes is amended to read:

12 813.1285 (7) (b) If a respondent surrenders a firearm under this section that
13 is owned by a person other than the respondent, the person who owns the firearm
14 may apply for its return to the circuit court for the county in which the person to
15 whom the firearm was surrendered is located. The court shall order such notice as
16 it considers adequate to be given to all persons who have or may have an interest in
17 the firearm and shall hold a hearing to hear all claims to its true ownership. If the
18 right to possession is proved to the court's satisfaction, it shall order the firearm
19 returned. If the court returns a firearm under this paragraph, the court shall inform
20 the person to whom the firearm is returned of the requirements and penalties under
21 s. ~~941.29 (4)~~ 941.2905.

22 **SECTION 11.** 939.46 (3) of the statutes is created to read:

23 939.46 (3) A petitioner under s. 813.12 or 813.122, or an individual whose
24 parent, stepparent, or legal guardian filed a petition under s. 813.122 on behalf of the
25 individual as a child victim, as defined in s. 813.122 (1) (c), has an affirmative defense

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1 for an offense under s. 175.35 (2e) that is punishable under s. 175.35 (3) (b) 2., or for
2 an offense under s. 941.2905, if the person prohibited from possessing a firearm was
3 the respondent in the action under s. 813.12 or 813.122.

4 **SECTION 12.** 939.6195 of the statutes is created to read:

5 **939.6195 Mandatory minimum sentence for repeat firearm crimes. (1)**

6 In this section:

7 (a) "Firearm violation" means any of the following:

8 1. A violation of s. 941.29 or 941.2905.

9 2. A commission of any crime specified under chs. 939 to 951 and 961 if the
10 person uses a firearm in the commission of the crime.

11 (b) "Repeater" has the meaning given in s. 939.62 (2).

12 **(2)** If a person who is a repeater is convicted of a firearm violation, the court
13 shall impose a bifurcated sentence under s. 973.01. Notwithstanding s. 973.01 (2)
14 (b), the term of confinement in prison portion of the bifurcated sentence shall be at
15 least 4 years, but otherwise the penalties for the crime apply, subject to any
16 applicable penalty enhancement. The court may not place the person on probation.

17 **(3)** This section does not apply to sentences imposed after July 1, 2022.

18 **(4)** The department of justice shall, after consulting with persons the
19 department determines to be appropriate, including the city of Milwaukee and the
20 Milwaukee police department, prepare a report on the efficacy of the mandatory
21 minimum sentence under this section. No later than August 1, 2022, the department
22 of justice shall submit the report to the chief clerk of each house of the legislature,
23 for distribution to the legislature under s. 13.172 (2).

24 **SECTION 13.** 941.29 (1g) (a) of the statutes is amended to read:

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1 941.29 (1g) (a) “Violent felony” means any felony under s. 943.23 (1m), 1999
2 stats., or s. 943.23 (1r), 1999 stats., this section, or s. 940.01, 940.02, 940.03, 940.05,
3 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21,
4 940.225, 940.23, 940.235, 940.285 (2), 940.29, 940.295 (3), 940.30, 940.302, 940.305,
5 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.2905, 941.292,
6 941.30, 941.327 (2) (b) 3. or 4., 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.32,
7 943.87, 946.43, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.051, 948.06,
8 948.07, 948.08, 948.085, or 948.30.

9 **SECTION 14.** 941.29 (4) of the statutes is repealed.

10 **SECTION 15.** 941.2905 of the statutes is created to read:

11 **941.2905 Straw purchasing of firearms. (1)** Whoever intentionally
12 furnishes, purchases, or possesses a firearm for a person, knowing that the person
13 is prohibited from possessing a firearm under s. 941.29 (1m), is guilty of a Class G
14 felony.

15 **(2)** The prohibition in sub. (1) against possessing a firearm for a person who
16 is prohibited from possessing a firearm does not apply to the possession of a firearm
17 by any of the following:

18 (a) A person to whom the firearm is surrendered under s. 813.1285.

19 (b) A person who has been designated under s. 51.20 (13) (cv) 3. to store the
20 firearm during the duration of the order under s. 51.20 (13) (cv) 1. not to possess a
21 firearm.

22 (c) A person who has been designated under s. 51.45 (13) (i) 3. to store the
23 firearm during the duration of the order under s. 51.45 (13) (i) 1. not to possess a
24 firearm.

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1 (d) A person who has been designated under s. 54.10 (3) (f) 3. to store the
2 firearm during the duration of the order under s. 54.10 (3) (f) 1.

3 (e) A person who has been designated under s. 55.12 (10) (c) to store the firearm
4 during the duration of the order under s. 55.12 (10) (a).

5 (f) A person not covered under pars. (a) to (e) who has been designated to store
6 the firearm during the duration of any temporary prohibition on the possession of a
7 firearm.

8 **SECTION 16.** 973.12 of the statutes is amended to read:

9 **973.12 Sentence of a repeater or persistent repeater. (1)** Whenever a
10 person charged with a crime will be a repeater or a persistent repeater under s.
11 939.62 or subject to a penalty under s. 939.6195 if convicted, any applicable prior
12 convictions may be alleged in the complaint, indictment or information or
13 amendments so alleging at any time before or at arraignment, and before acceptance
14 of any plea. The court may, upon motion of the district attorney, grant a reasonable
15 time to investigate possible prior convictions before accepting a plea. If the prior
16 convictions are admitted by the defendant or proved by the state, he or she shall be
17 subject to sentence under s. 939.6195 or 939.62 unless he or she establishes that he
18 or she was pardoned on grounds of innocence for any crime necessary to constitute
19 him or her a repeater or a persistent repeater. An official report of the F.B.I. or any
20 other governmental agency of the United States or of this or any other state shall be
21 prima facie evidence of any conviction or sentence therein reported. Any sentence
22 so reported shall be deemed prima facie to have been fully served in actual
23 confinement or to have been served for such period of time as is shown or is consistent
24 with the report. The court shall take judicial notice of the statutes of the United

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1 States and foreign states in determining whether the prior conviction was for a felony
2 or a misdemeanor.

3 (2) In every case of sentence under s. 939.6195 or 939.62, the sentence shall be
4 imposed for the present conviction, but if the court indicates in passing sentence how
5 much thereof is imposed because the defendant is a repeater, it shall not constitute
6 reversible error, but the combined terms shall be construed as a single sentence for
7 the present conviction.

8 **SECTION 17.** 976.05 (12) of the statutes is amended to read:

9 976.05 (12) Nothing in this section or in the agreement on detainers shall be
10 construed to require the application of s. 939.6195 or 939.62 to any person on account
11 of any conviction had in a proceeding brought to final disposition by reason of the use
12 of said agreement.

13 **SECTION 18. Initial applicability.**

14 (1) FALSE INFORMATION ON NOTIFICATION FORMS. The treatment of section 175.35
15 (4) of the statutes, the renumbering of section 175.35 (2g) (b) of the statutes, the
16 renumbering and amendment of section 175.35 (3) of the statutes, and the creation
17 of section 175.35 (2g) (b) 2. and (3) (b) of the statutes first apply to offenses committed
18 on the effective date of this subsection.

19 (2) REPEAT FIREARM CRIMES. The treatment of section 939.6195 of the statutes
20 first applies to offenses committed on the effective date of this subsection but does
21 not preclude counting prior offenses for sentencing purposes.

22 (END)