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THE RIGHT TO BEAR ARMS

2003 Senate Bill 214, relating to carrying a concealed weapon, passed the Legislature in early November 2003, and was vetoed by Governor Jim Doyle on November 18, 2003. Senate Bill 214, and its identical counterpart 2003 Assembly Bill 444, would have given Wisconsin citizens the right to carry concealed firearms with certain restrictions. This brief provides a summary of the bill, current law, and recent Wisconsin Supreme Court decisions involving concealed weapons. It concludes with a brief overview of newly enacted laws and pending legislation in other states.

CURRENT LAW

Constitutional Amendment Adopted

Section 941.23 of the Wisconsin Statutes provides that any person except a peace officer who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor. However, in November 1998, Wisconsin voters ratified an amendment to the state constitution which states: "The people have the right to keep and bear arms for security, defense, hunting, recreation, or any other lawful purpose." (Article I, Section 25) From 1983 to 1997, 16 amendments had been introduced to add a similar provision. It had been argued that adoption of the amendment was redundant due to the Second Amendment of the U.S. Constitution which states: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." However, in *United States v. Cruikshank*, 92 U.S. 542, 553 (1876) the Supreme Court ruled that the Second Amendment applies only to the

federal government, placing no restrictions on state actions.

State Supreme Court Decisions

In July 2003, the Wisconsin Supreme Court found that the right granted by Article I, Section 25 is not absolute, but, under certain circumstances, the amendment can and should override state interests when personal safety is at stake. In *State of Wisconsin v. Philip Cole*, WI 112, 665 N.W. 2d 328 (2003), the defendant was convicted of violating statute section 941.23, because police found two concealed weapons in a car in which he was riding. Cole appealed his conviction, arguing that his constitutional right to keep and bear arms had been violated. The court upheld his conviction, concluding that although Article I, Section 25 created a fundamental right, that right is still subject to reasonable restriction.

In *State of Wisconsin v. Munir A. Hamdan*, WI 113 (2003), the Wisconsin Supreme Court ruled that Hamdan's constitutional right to bear arms had been violated, overturning his conviction for violation of statute section 941.23. Hamdan was convicted after he removed a gun from his pants pocket when police officers entered his store carrying out a license check, and asked if he had a gun on the premises. The court found that Hamdan's personal interest in having a concealed weapon in his store outweighed the State's interest in enforcing the statute:

"If the constitutional right to keep and bear arms for security is to mean anything, it must, as a general matter, permit a person to possess, carry and sometimes conceal arms to maintain the security of his private

residence or privately operated business, and to safely move and store weapons within these premises.”

The court went on to state that a Wisconsin resident has the right to carry a concealed weapon on his or her own property, business or home, when: 1) the need to exercise this right is significant, 2) the person has no other reasonable means to keep and handle the weapon, and 3) the person was not motivated by any unlawful purpose in concealing the weapon. On behalf of the 6-1 majority, Justice David Prosser wrote in the opinion: “We urge the legislature to thoughtfully examine Wisconsin Statute Section 941.23 in the wake of the (Right to Keep and Bear Arms) amendment and to consider the possibility of a permit system for persons who have a good reason to carry a concealed weapon.”

2003 SENATE BILL 214

Overview

Senate Bill 214 was introduced by Senators David Zien and Robert Welch and 11 other senators, and cosponsored by Representatives Scott Gunderson and Scott Suder and 35 other representatives. The bill proposed to give Wisconsin citizens the right to go armed with a concealed weapon in their homes, businesses or on land that they own, lease, or otherwise legally occupy unless prohibited from doing so under federal or state law. Persons prohibited included those convicted of a misdemeanor crime of domestic violence, or a felony; persons who illegally use a controlled substance; those who have been committed to a mental health facility; or those subject to a stalking, harassment, or domestic violence restraining order. In addition, the bill provided a process for obtaining a license to carry a concealed weapon throughout the state except where specified within the bill.

Under the bill, applicants would have had to be at least 21 years of age, and pass a background check. The bill excluded law

enforcement officers, probation and parole agents, correctional officers, or anyone else with current certification from the Law Enforcement Standards Board from background checks. The bill also required the Department of Justice to draft the application form and perform firearms restrictions record searches for all applicants. An applicant, under SB-214, would have to submit an application form, a license fee, a photocopy of a certificate or other evidence showing the applicant’s completion of firearms training provided by an instructor certified by the National Rifle Association or another national or state organization that certifies firearms instructors, and a full-face photo to a sheriff’s office. The bill also proposed to exempt concealed weapons licensing records from the state’s open records law.

The Issues

In early September 2003, the Senate Judiciary Committee and Assembly Criminal Justice Committee held a joint legislative hearing on Senate Bill 214. At the hearing, supporters argued that giving people the right to carry concealed weapons would deter crime and provide more protection for society as a whole. In addition, supporters felt that people must have the ability to protect themselves because police are not always available for personal protection. Opponents argued that carrying concealed weapons would actually increase crime, and people would react differently in certain high pressure or volatile situations if a firearm or other dangerous weapon was readily available. Opponents also took issue with the exemption from the Open Records Law (Section 19.35(1)(a), Wisconsin Statutes). The Racine Common Council and the Madison City Council passed resolutions opposing Senate Bill 214. However, the Racine County Board passed a resolution in favor of the bill.

Definitions and Exceptions

The legislation defined a concealed weapon as a handgun, stun gun, tear gas gun, knife other than a switchblade, or a billy club. The bill allowed license holders to carry these weapons anywhere in Wisconsin except for the following places: police stations, sheriffs' offices, state patrol stations, prisons, jails, school administration buildings, airports, taverns, or any place declared a nuisance. Any place in which carrying a concealed weapon is prohibited by federal law was also included among the exceptions. The bill would have prohibited concealed weapons in churches, synagogues, and other buildings used for religious worship; hospitals and other health care facilities; buildings used for domestic violence victims programs; or childcare facilities unless the individual institution chose to permit a licensee to do so. Additionally, concealed weapons would not have been allowed in courthouses (with exceptions); buildings on public or private university, college, or technical college campuses; buildings used for instructional purposes by private or public universities, colleges, or technical colleges; kindergarten classrooms or facilities; organized youth sports events; and any place where school, college, or professional athletic events were taking place unless the event was related to firearms and the licensee was a participant.

Current law prohibits firearms in school zones. The bill proposed to exempt licensees from that prohibition if the licensee was in a motor vehicle or on a snowmobile or bike; had exited from a motor vehicle and was storing the weapon in the vehicle; or was traveling directly between any person's private property, the licensee's place of employment or business, or a place outside of the school zone. However, the legislation prohibited any person with a blood alcohol concentration

exceeding 0.08 from carrying a concealed weapon anywhere in the state.

Rights of Property Owners and Employers

Under SB-214, private property owners would have the right to prohibit concealed weapons from being on their property. Nonresidential property owners could prohibit concealed weapons on their property by posting a sign at least 11 square inches in a prominent place near the primary entrance of the building, and by verbal notification. A verbal notification was required because the offense in this instance would have involved an individual failing to leave the nonresidential property when orally requested to do so by the owner, rather than failing to see the posted sign. Employers could have prohibited employees licensed to carry concealed weapons from carrying them while working. The bill proposed to grant immunity for any liability to employers who allowed license holders they employ to carry concealed weapons on their premises, if the decision was made in good faith.

Other Provisions

Senate Bill 214 included several additional provisions. For instance, it would have given a sheriff the authority to grant an emergency license to a person if the sheriff determined that the person needed immediate protection from death or great bodily harm. It granted a sheriff the power to revoke a license if the licensee no longer met the requirements for a license. Licenses or permits issued by other states would have been treated in the same manner as a license issued under this legislation, if the state required the licensee to undergo a background check and training before granting the license. The only exception would have been Vermont, because that state does not require a license or permit to carry a

concealed weapon. Some other provisions were:

- A person who was denied a license or had it suspended or revoked would have the right to appeal the action in circuit court.
- Sheriffs were required to provide information to the Department of Justice (DOJ) regarding a person licensed to carry a concealed weapon. DOJ would keep the list and could make it available to law enforcement agencies only in certain circumstances.
- Licensees were required to notify the sheriff within 10 days after being charged with a crime or a drunk driving offense under federal law or the law(s) of another state.

Penalties

The bill stipulated three penalties relating to the carrying of a concealed weapon. First, all licensees would be required to carry their license document while carrying their weapon, or face a possible forfeiture of \$25. Also, licensees would have to strictly adhere to the guidelines specified within their license regarding where concealed weapons cannot be carried. Second, any person who carried a concealed weapon where they were not authorized to do so would face a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both. Lastly, a person would face a fine of not less than \$500 and not more than \$10,000 and possible imprisonment for not more than nine months if any of the following actions were committed:

- Intentionally made a false statement in an application for a license.
- Intentionally failed to report being charged under federal law or the law(s) of another state with any crime or any drunk driving offense within 10 days after being charged with the crime.

- Intentionally failed to surrender a license document to a sheriff after it had been revoked.

Governor's Veto

Senate Bill 214 as amended by Senate Substitute Amendment 2, and Senate Amendments 2, 4, 22, and 48 passed the Senate on October 23, 2003, by a vote of 24-8. Engrossed SB-214 passed the Assembly as amended by Assembly Amendment 70 on November 5, 2003, by a vote of 64-35, with the Senate concurring on November 11, 2003. Governor Doyle vetoed the bill, stating:

“Wisconsin is one of the safest states in the country and boasts one of the lowest crime rates nationwide. We have maintained this low crime rate at the same time we have banned the carrying of concealed weapons. This veto does not result in an absolute ban on the carrying of concealed weapons in one’s home or private business, nor does this action eliminate any rights of Wisconsin citizens.”

LEGISLATION IN OTHER STATES

Recently, several states have either introduced legislation to permit the carrying of concealed weapons, or they have already enacted laws legalizing the act. Four of these states (Minnesota, New Mexico, Michigan, and Missouri) have enacted laws legalizing the carrying of concealed weapons. Missouri’s Governor Bob Holden vetoed legislation earlier in the year, however, the Missouri Legislature overrode his veto in September 2003, making Missouri the 45th state to legalize the carrying of a concealed weapon. Other states (Ohio, Illinois, Nebraska, and Hawaii) have legislation pending.