



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2063/1
CMH&MED:sac:rs

2013 BILL

1 **AN ACT** *to create* 175.36, 448.28 and 946.77 of the statutes; **relating to:**
2 restrictions on enforcing federal laws regulating firearms, firearm accessories,
3 and ammunition; restrictions on questions from physicians about firearms; and
4 providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits a state or local law enforcement officer from enforcing a federal act, law, statute, rule, regulation, treaty, or order (federal law) that takes effect on or after January 1, 2013, if the federal law bans or restricts semi-automatic firearms, assault weapons, or magazines; requires registration of firearms, magazines, or other firearm accessories; regulates the capacity of magazines; regulates the quantity of ammunition or bullets an individual may possess; prohibits types of ammunition or bullets; or requires the confiscation of a firearm. A law enforcement officer who knowingly violates the prohibition is guilty of a Class A misdemeanor. In the case of a challenge to the prohibition, the legislature has included an intent statement that finds authority for it in the second, ninth, and tenth amendments to the U.S. Constitution and in article I, section 25, of the Wisconsin Constitution and that declares that firearms manufactured in Wisconsin have not traveled in interstate commerce and thus are not subject to federal regulation under the interstate commerce clause of the U.S. Constitution and that the incorporation of firearm components that have traveled in interstate commerce in a firearm manufactured in Wisconsin does not subject the firearm to federal regulation under the commerce clause.

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This bill also requires a manufacturer of firearms in this state to include a stamp on the firearm that reads “Made in Wisconsin.” This requirement applies only to firearms manufactured after the effective date of the requirement, and this bill delays that effective date by six months.

The bill provides that no physician, other than a psychiatrist, may, in conjunction with obtaining the patient’s personal information and medical history, do either of the following: 1) inquire of the patient, whether orally, through an employee or agent, or through the use of a form, whether the patient has any firearms in the patient’s home or on the patient’s property; or 2) require the patient to disclose such information before providing treatment to the patient. A physician who violates the prohibition may be fined not more than \$25,000, imprisoned not more than 9 months, or both.

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.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 175.36 of the statutes is created to read:

2 **175.36 Firearm requirement.** Any person who manufactures a firearm in
3 this state on or after the effective date of this section [LRB inserts date], shall have
4 clearly stamped on a central metal part of the firearm “Made in Wisconsin.”

5 **SECTION 2.** 448.28 of the statutes is created to read:

6 **448.28 Inquiries about firearms.** No physician, other than a psychiatrist,
7 may, in conjunction with obtaining a patient’s personal information and medical
8 history, do any of the following:

9 (1) Inquire of the patient, whether orally, through an employee or agent, or
10 through the use of a form, whether the patient has any firearms in the patient’s home
11 or on the patient’s property.

12 (2) Require the patient to disclose the information described under sub. (1)
13 before providing treatment to the patient.

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1 **SECTION 3.** 946.77 of the statutes is created to read:

2 **946.77 Federal restrictions on firearms unenforceable. (1)** LEGISLATIVE
3 INTENT. (a) The legislature declares that the authority for this section is found in all
4 of the following:

5 1. The 10th amendment to the U.S. Constitution, which reserves to the state
6 or to the people all powers not delegated to the federal government elsewhere in the
7 constitution. The 10th amendment reserves to the state and people of Wisconsin
8 certain powers as they were understood at the time that Wisconsin was admitted to
9 statehood in 1848. The guarantee of those powers is a matter of contract between
10 the state and people of Wisconsin and the United States as of the time of statehood.

11 2. The 9th amendment to the U.S. Constitution, which guarantees to the people
12 rights not granted in the constitution and reserves to the people of Wisconsin certain
13 rights as they were understood at the time Wisconsin was admitted to statehood in
14 1848. The guarantee of these rights is a matter of contract between the state and
15 people of Wisconsin and the United States as of the time of statehood.

16 3. The 2nd amendment to the U.S. Constitution, which reserves to the people,
17 individually, the right to keep and bear arms as that right was understood at the time
18 that Wisconsin was admitted to statehood in 1848, and the guarantee of that right
19 is a matter of contract between the state and people of Wisconsin and the United
20 States as of the time of statehood.

21 4. Article I, section 25, of the Wisconsin Constitution, which guarantees
22 Wisconsin citizens the right to keep and bear arms for security, defense, hunting,
23 recreation or any other lawful purpose.

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1 (b) The legislature declares that article I, section 8, of the U.S. Constitution
2 applies only to items that have traveled in interstate commerce and does not apply
3 to firearms, firearm accessories, or ammunition owned or manufactured in this state.

4 (c) The legislature declares that a component part of a firearm that has
5 multiple manufacturing or consumer product applications is not a firearm, a firearm
6 accessory, or ammunition and is not subject to a federal law regulating firearms,
7 firearm accessories, or ammunition. Incorporation in a firearm, a firearm accessory,
8 or ammunition of a component part that has been imported into Wisconsin does not
9 subject the firearm, firearm accessory, or ammunition to a federal law regulating
10 firearms, firearm accessories, or ammunition and does not mean the firearm, firearm
11 accessory, or ammunition has traveled in interstate commerce.

12 **(2) DEFINITIONS.** In this section:

13 (a) “Federal law” means any act, law, statute, rule, regulation, treaty, or order
14 of the U.S. government and includes any federal firearm or ammunition registration
15 program.

16 (b) “Firearm accessory” means an item that is used in conjunction with, or
17 mounted on, a firearm but that is not essential to the basic function of a firearm.

18 (c) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

19 **(3) PROHIBITION.** No law enforcement officer may knowingly enforce or attempt
20 to enforce a federal law that takes effect on or after January 1, 2013, that does any
21 of the following:

22 (a) Bans or restricts ownership or possession of semi-automatic firearms,
23 assault weapons, or magazines.

24 (b) Requires registration of firearms, magazines, or other firearm accessories.

25 (c) Regulates the capacity of magazines.

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1 (d) Regulates the quantity of ammunition or bullets an individual may possess.

2 (e) Prohibits types of ammunition or bullets.

3 (f) Requires the confiscation of a firearm.

4 (4) EXCEPTIONS. Notwithstanding sub. (3), a law enforcement officer may
5 enforce a federal law that bans, restricts ownership or possession of, regulates, or
6 confiscates any of the following;

7 (a) A firearm that cannot be carried and used by one individual.

8 (b) Ammunition that has a projectile that explodes using chemical energy after
9 the projectile leaves the firearm.

10 (c) A firearm, other than a shotgun that is not a fully automatic shotgun, that
11 discharges 2 or more projectiles with one activation of the trigger or other firing
12 device.

13 (5) OFFICER NOT SUBJECT TO DISCIPLINE. No law enforcement officer may be
14 discharged, disciplined, demoted, or suspended; denied promotion, transfer, or
15 reassignment; or otherwise discriminated against with regard to employment; or
16 threatened with any such treatment for complying with the prohibition under sub.
17 (3).

18 (6) PENALTY. A law enforcement officer who violates sub. (3) is guilty of a Class
19 A misdemeanor.

20 **SECTION 4. Effective date.**

21 (1) FIREARM STAMPING. The treatment of section 175.36 of the statutes takes
22 effect on the first day of the 7th month beginning after publication.

23 (END)