

School Districts Should Revisit Policies and Practices Related to Safety and Firearms Due to Recent Legislative Changes

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Practice Area: School Law & Government Law

On June 24, 2015, Governor Scott Walker signed 2015 Senate Bill 35 and 2015 Senate Bill 70 into law, creating 2015 Wisconsin Act 22 and 2015 Wisconsin Act 23, respectively. Both of these Acts significantly change the laws surrounding firearms and some of those changes should cause school district officials to revisit current policies and practices related to firearms and safety to ensure compliance. Below are highlights of what has changed, and not changed, as a result of the recent Acts.

2015 Wisconsin Act 22—No More 48-Hour Wait for Firearms

What was the old law prior to 2015 Wisconsin Act 22?

Under the old law, when an individual would purchase a firearm, the Department of Justice ran a confirmation check on the customer to ensure he or she was not legally restricted from possessing a firearm. Then, once the Department of Justice notified the firearms dealer that the customer could legally purchase the firearm, the dealer would be required to hold on to the firearm for at least 48 hours before turning possession over to the customer.

What has changed now that 2015 Wisconsin Act 22 has been enacted?

Under the new law, the biggest change is the elimination of the 48-hour waiting period. Now, once the Department of Justice verifies the customer may legally possess a firearm, the customer is able to receive possession of the firearm immediately.

An additional, smaller change has been made to the definition of who constitutes a "firearms dealer." The old law defined "firearms dealer" as "any person engaged in the business of importing, manufacturing or dealing in firearms and having a license as an importer, manufacturer or dealer issued by the U.S. Department of the Treasury." Act 22 slightly broadened the scope of who may be considered a "firearms dealer." It did this by allowing the title of "firearms dealer" to apply to anyone who is issued a license to import, manufacture or deal firearms by the federal government; not just the U.S. Department of the Treasury.

What has remained the same despite the enactment of 2015 Wisconsin Act 22?

Despite the elimination of the 48-hour waiting period, the Department of Justice is still required to run confirmation checks on all individuals who attempt to purchase a firearm. The process and procedure of the confirmation checks remains unchanged under the new Act.

The mandated procedure firearms dealers must adhere to each time they sell a firearm also remains unchanged. That process is as follows: (1) the customer must provide identification; (2) the customer must complete a notification form; (3) the firearms dealer must convey the information from the notification form to the Department of Justice for a firearms search; (4) if the customer is approved, the firearms dealer will receive an approval number.

Additionally, statutory restrictions on who may possess a firearm have not changed under the new laws.

2015 Wisconsin Act 23—Retired, Off-Duty and “Qualified” Out-of-State Officers with Guns in School Zones

What was the old law prior to 2015 Wisconsin Act 23?

Under the Wisconsin Gun Free School Zone Act, an individual was prohibited from knowingly possessing a firearm at a place the individual knew, or had reasonable cause to believe, was a school zone. A school zone was defined as in or on the grounds of a school, or within 1000 feet from the grounds of a school.

The following exceptions under the Gun Free School Zone Act allowed for the presence of firearms in school zones:

- On private property that is not part of school grounds;
- An individual licensed to do so;
- A firearm that is unloaded and is in a locked container or locked firearms rack on a motor vehicle;
- An individual who has contracted with the school;
- A law enforcement officer acting in his/her official capacity;
- An unloaded firearm possessed by an individual who has authorization to enter school premises to hunt on public and private lands.

Generally speaking, discharging a firearm in a school zone was illegal; however, the following exceptions allowed for a legal discharge of a firearm in a school zone:

- On private property that is not part of school grounds;
- As part of a program approved by a school;
- By an individual in accordance with a contract entered into with the school;
- By a law enforcement officer acting in his/her official capacity.

What has changed now that 2015 Wisconsin Act 23 has been enacted?

Act 23 amended the Wisconsin Gun Free School Zone Act, allowing off-duty, retired and “qualified” out-of-state law enforcement officers to possess a firearm in school zones. Act 23 also allows retired, off-duty and “qualified” out-of-state officers to legally discharge their weapons in school zones.

Who is considered a “qualified” out-of-state officer?

- The person must be employed by a state or local government agency in another state;
- The agency must have authorized the person to carry a firearm;
- The person cannot be the subject of any disciplinary action that could result in suspension or loss of the person’s law enforcement authority;
- The person must meet all standards established by the agency to qualify the person on regular basis to use a firearm;
- The person cannot be prohibited under federal law from possessing a firearm.

Are there any restrictions or qualifications that a “qualified” out-of-state, off-duty, or retired officer must meet to legally possess a firearm in a school zone?

Both off-duty and “qualified” out-of-state officers are subject to the following restrictions and qualifications under the new laws:

- The firearm cannot be a machine gun or a destructive device;
- The officer cannot be carrying a firearm silencer;
- The officer cannot be under the influence of an intoxicant.

Retired officers are subject to the following restrictions and qualifications under the new laws:

- The former officer has been issued a photographic identification document;
- The weapon must be the type of firearm described in the photographic identification document;
- Within the past 12 months, the former officer has to have met the same state standards for training and qualifications that active duty law enforcement officers are subject to (the former officer must meet the standards of the state in which he or she resides);
- The weapon cannot be a machine gun or a destructive device;
- The former officer cannot carry a firearm silencer;
- The former officer cannot be under the influence of an intoxicant;
- The former officer cannot be prohibited under federal law from possessing a firearm.

What has remained the same despite the enactment of 2015 Wisconsin Act 23?

All of the prior exceptions to the Wisconsin Gun Free School Zone Act relating to who may legally possess and discharge a firearm in a school zone remain intact. Additionally, the definition of "school zone" went unchanged.

What are the policy implications of both Act 22 and 23?

As a result of Act 22, individuals may now obtain possession of a firearm the same day of purchase. While this is a significant change, to be sure, all other requirements and procedures imposed on both firearms dealers and firearms purchasers remain unchanged.

While Act 23 has changed the law significantly, possession of weapons in or on school grounds, or within 1000 feet of school grounds, is prohibited unless an exception to the Gun Free School Zone Act applies. A retired, off-duty or "qualified" out-of-state officer may only possess a firearm within a school zone if they meet the requirements mentioned above. Because various individuals may now legally possess a firearm in a school zone, it would be prudent to develop policies and procedures to ensure that anyone believed to be carrying or possessing a firearm in a school zone meets the requirements and qualifications set forth in the new laws.

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