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INSTITUTE FOR LEGISLATIVE ACTION  
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**NRA**

Office of the Executive Director  
CHRIS W. COX

October 5, 2011

The Honorable J.B. Van Hollen  
Attorney General  
Wisconsin Department of Justice  
P.O. Box 7857  
Madison, WI 53707-7857

Dear Attorney General Van Hollen,

As you know, the National Rifle Association strongly supported enactment of 2011 Wisconsin Act 35, the state's new concealed firearms licensing law, and worked closely with its authors during the legislative session. We believe the language of the Act is uncommonly clear and explicit. Nevertheless, based on hard lessons learned in other jurisdictions, we forcefully advocated for the language in § 175.60(2)(b), which states: "The department [of justice] may not impose conditions, limitations, or requirements that are not expressly provided for in this section on the issuance, scope, effect, or content of a license."

Despite the Act's straightforward terms and the clearly-expressed legislative intent to limit the Department of Justice's (DOJ's) discretion in administering it, we have received troubling reports that DOJ's proposed rules to implement the law would contain requirements not present in the law itself. I am writing now to alert you to these concerns and to point out relevant authority in the text of the law itself that governs these matters.

The most consistently expressed concern is that DOJ intends to add its own requirements to the mandatory training an applicant must undergo before obtaining a permit. Specifically, we understand DOJ intends to require that a qualifying training course be at least four hours long and include some form of hands-on firearms training.

Needless to say, as the nation's leading provider of firearms training and certification of firearms instructors, NRA strongly advocates that all who handle firearms be thoroughly versed in their safe and responsible use. Act 35 was drafted with the recognition, however, that a one-size-fits-all training requirement would be insufficient for some and unnecessary for others and would dissuade some otherwise eligible applicants from exercising their right under the law because of the financial and logistical burdens involved.

Using language that closely tracks the settled law of other jurisdictions, the Act offers applicants a variety of independent training options so they can choose the one best suited to their needs. Any one of these options is sufficient to fulfill the statutory mandate, and none is treated with any more favor under the law than any other.

The broadest option for training is a “firearms safety or training course that is conducted by a firearms instructor who is certified by a national or state organization that certifies firearms instructors.... Wis. Stat. Ann. § 175.60 (4)(a) 1. e.

Nothing could be clearer than that the National Rifle Association – which is incorporated under the laws of New York and certifies instructors in that state and also has a national network of some 80,000 certified instructors operating in every other U.S. state (including Wisconsin) – qualifies as “a national or state organization that certifies firearms instructors.” Thus, a firearms safety or training course conducted by an NRA-certified firearms instructor, for example, fulfills the statutory training requirement.

Another option to fulfill the training requirement is to complete a firearms safety or training course that is conducted by a firearms instructor “who is certified by the department [of justice].” Wis. Stat. Ann. § 175.60 (4)(a)(1)(e). The statute accordingly gives DOJ the authority to “certify instructors for the purposes of par. (a) 1. c. and e” of § 175.60 (4). Wis. Stat. Ann. § 175.60 (4)(b) 1.

Note, however, that under paragraph (a) 1. c. and e, two *different* categories of firearm instructors are eligible to teach qualifying courses: those who are certified by a national or state organization that certifies firearms instructors *or* those certified by the DOJ. Thus, a firearms instructor who is certified by a national or state organization that certifies firearms instructors is qualified to provide training under the statute whether or not that instructor is also certified by DOJ.

The DOJ might argue that it has implied authority to create standards for those instructors who obtain DOJ certification, but it has no authority to create standards for instructors who are certified by a national or state organization that certifies firearms instructors or for any other of the other training options that do not use DOJ certified instructors. The content and form of courses taught by instructors certified by an entity other than DOJ are to be established by the instructors themselves or, if required under the terms of their certification, by the entity that certifies them.

Moreover, even with regard to DOJ certified instructors, the statute is clear that DOJ “may not require firing live ammunition to meet the training requirements under par. (a).” Wis. Stat. Ann. § 175.60 (4)(b) 2. Of course, some instructors and applicants may wish to make live fire training part of the training process, and they are free to do so.

Significantly, amendments that would have dictated training course length and content requirements were offered and rejected during the debates and hearings on the Act. Clearly, it was the intent of the legislature not to micromanage the required training and to allow applicants a broad range of options from which to choose.

Another concern that has been raised is that DOJ is going to enact its own requirements for what information must be included on the documents submitted for proof of training. Once again, the law is clear:

The proof of training requirement under sub. (7) (e) may be met by any of the following ... [a] copy of a document, or an affidavit from an instructor or organization that conducted the course or program, that indicates the individual completed any of the [specified training options].

Nevertheless, we are told that DOJ intends to require instructors to sign the certificates and indicate where the training occurred.

The problem here is two-fold. First, it might require providers of training to alter their current practices. The NRA, for example, only recently began issuing certificates of completion on which instructors indicate where the training occurred (and it continues to allow instructors to issue older certification forms that do not include this information). NRA certificates also require instructors to identify themselves but not necessarily to provide a signature. The Act does not provide the DOJ with authority to dictate to non-DOJ instructors or non-DOJ certifying entities the form of a certificate of completion, nor does it authorize DOJ to reject copies of otherwise valid certificates of completion or otherwise valid affidavits from qualifying trainers based on the form or content of those documents. Of course, submission of forged or falsified evidence of training is punishable under the provisions of false swearing. *See* Wis. Stat. Ann. §§ 175.60(5)(a) 4., (7)(b), (15)(b) 2., (17)(c); 946.32

Secondly, the Act does not establish an expiration date for training. Thus, a person with otherwise valid documentation of training may not be able to submit that documentation with an application because it does not meet DOJ's form or content requirements, and the person may no longer be able to locate the trainer (who could have moved or retired, for example) to have him or her update the documentation.

While training issues are the most frequently expressed concerns, we have heard others as well. With regard to permit reciprocity, for example, we understand that DOJ is taking a narrow view of what constitutes "comparable" background checks, *see* Wis. Stat. Ann. §§ 165.25(12); 175.60(f)-(g), potentially resulting in the licenses of some 19 states being ineligible for reciprocity in Wisconsin. This, again, is contrary to the liberal approach taken by the Act in recognizing the right to carry.

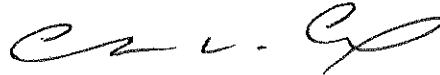
The enactment of concealed carry legislation was a long time in coming to Wisconsin and was preceded by multiple state court rulings finding that the federal and state constitutions protect the right to carry concealed firearms for self-defense. Some believe that only a regime of unlicensed carry would comport with these holdings, but the NRA was willing to work toward introducing concealed carry in Wisconsin with the

broadest support possible, taking into account the concerns of various stakeholders in the process. As a result, the bill passed with strong bipartisan support. Make no mistake, however, the final law was meant to enact a broad and accessible right to carry for responsible, peaceable persons within the State, with a presumption of freedom, rather than of extensive regulation.

We are frankly disappointed with the grudging attitude DOJ has taken toward this law. The NRA has repeatedly been forced into extended and, at times absurd, debates with DOJ over such details as whether NRA qualifies as "a national or state organization that certifies firearms instructors." We understand DOJ's desire to be deliberate in implementing this new law, and we stand ready to help. Nevertheless, we are increasingly concerned that we are at odds with the DOJ in this regard, rather than working together as we would strongly prefer.

Thank you for taking these comments under consideration. We still hope that we can work cooperatively to smooth the way for concealed carry in Wisconsin and for a safer, freer future for the people of the state.

Sincerely,



Chris W. Cox  
Executive Director, NRA-ILA

cc: Governor Scott Walker  
Assembly Speaker Jeff Fitzgerald  
Senate Majority Leader Scott Fitzgerald  
Senator Pam Galloway  
Representative Jeffrey Mursau  
Assembly Majority Leader Scott Suder