



May 3rd, 2023

Members of the Senate Committee on Judiciary and Public Safety

Testimony on 2023 Senate Bill 205

Relating to: grants to prevent suicide by firearm and making an appropriation

Thank you members of the committee for hearing this legislation today. Senate Bill 205 is a way we can help address those who are suffering from a mental or behavioral crisis, especially when it comes to firearms. This bill can bring our communities together and look out for one another when times get tough.

SB 205 would establish a grant program for organizations, coalitions, and municipalities to help train firearm retailers on how to recognize a suicidal individual, provide suicide prevention distribution materials in their stores or ranges, or provide, temporary and voluntary firearm storage in their stores or ranges. The recipients must contribute matching funds or in-kind services equal to twenty percent of the awarded grant, which is set at a max of \$5,000 per awardee.

We lost 888 Wisconsinites last year to suicide. The use of firearms in suicides has increased over the last decade. Unfortunately, suicide by firearm leaves little room for a second chance. For suicide attempts that don't involve a gun, 4% result in death, but that number jumps to 90% when a firearm is used. In these instances, intervention is crucial; the time and space in between an individual and a firearm can literally save a life.

As a police chief in Altoona, we held guns for "safe-keeping" for our residents. I am proud to say there are other agencies across our state who are doing the same thing. We took firearms on a temporary, voluntarily basis. I found this effort to be a way to establish rapport, relationships with community members, and partnerships within our community. This is about public safety, customer service, and truly protecting and serving our community.

More of our Wisconsin Gun Shops are also doing this exact thing. For instance, Marcon Shooting, a gun shop in my district, is allowing customers to store guns at their facility. They know their customers and care about those who come through their doors. They would not hesitate to ask their customer the tough questions if they came to retrieve their firearms and looked in distress. It is this type of compassion that we need more of. While it won't completely eliminate suicide in our state, providing gun owners with an additional layer of voluntary security during times of mental distress will save lives. Suicide is preventable; let's treat it as such.

Respectfully,

A handwritten signature in black ink, appearing to read "Jesse James".

Senator Jesse James
23rd Senate District
Sen.James@legis.wisconsin.gov

Wisconsin Legislative Council



Anne Sappenfield
Director

TO: SENATOR JESSE JAMES

FROM: Amber Otis, Senior Staff Attorney

RE: 2023 Senate Bill 205, Relating to Grants to Prevent Suicide by Firearm

DATE: April 28, 2023

At your request, this memorandum describes 2023 Senate Bill 205, relating to grants to prevent suicide by firearm, and its potential effect on a firearm retailer's liability under the doctrine of negligent entrustment, an exception to a general protection from civil liability afforded under the federal Protection of Lawful Commerce in Arms Act (PLCAA).

CURRENT LAW

Protection of Lawful Commerce in Arms Act

The federal PLCAA generally provides certain types of participants in the firearms industry, such as manufacturers and sellers, protections from civil liability for acts involving firearms or ammunition performed unlawfully by purchasers or third parties.

Specifically, the PLCAA prohibits a "qualified civil liability action" from being brought in any federal or state court. For this purpose, a "qualified civil liability action" is defined, in relevant part, as a civil action or proceeding brought by any person against a seller¹ of a firearm for damages or other relief resulting from the criminal or unlawful misuse² of a qualified product by the person or a third party. [15 U.S.C. ss. 7902 and 7903 (5).]

However, the PLCAA excludes several types of claims from the definition of "qualified civil liability action," meaning that the above protections from claims brought in federal or state courts may not apply in certain types of cases. Since enactment of the PLCAA in 2006, litigation involving the firearms industry has generally focused on whether one of the PLCAA's exceptions applies.³

¹ Under the PLCAA, a "seller" means any of the following: (a) a licensed importer who is engaged in the business as such an importer in interstate or foreign commerce; (b) a licensed dealer who is engaged in the business as such a dealer in interstate or foreign commerce; or (c) a person engaged in the business of selling ammunition in interstate or foreign commerce at the wholesale or retail level. [15 U.S.C. s. 7903 (6).]

² The PLCAA defines "unlawful misuse" as "conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product." [15 U.S.C. s. 7903 (9).]

³ For more information about the PLCAA, its exceptions, and examples of litigation, see Congressional Research Service, *The Protection of Lawful Commerce in Arms Act: An Overview of Limiting Tort Liability of Gun Manufacturers* (December 2012).

Specifically, as relevant to your inquiry, a “qualified civil liability action” does not include an action brought against a seller for “negligence per se” or “negligent entrustment.” The PLCAA defines “negligent entrustment” as “the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.” [5 U.S.C. s. 7903 (5) (A) (ii) and (B).]

Negligent Entrustment Under Wisconsin Tort Law

Although the PLCAA defines “negligent entrustment” for purposes of the exception to the general protections under that law, a plaintiff’s claim for negligent entrustment is generally governed by state tort law.

Wisconsin courts have adopted the following standard for claims of negligent entrustment:

It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

[*Bankert v. Threshermen’s Mut. Ins. Co.*, 110 Wis. 2d 469 (1983) (adopting the Restatement (Second) of Torts. s. 308).]

In other words, for a civil claim of negligent entrustment under Wisconsin law,⁴ a jury must find that the defendant: (1) was initially in control of an object; (2) permitted a third party to use the object; and (3) either knew, or in the exercise of ordinary care should have known, that the third party intended or was likely to use the object in a way that would create an unreasonable risk of harm to others. [See, Wis. JI – Civil 1014 (2017).]

2023 SENATE BILL 205

2023 Senate Bill 205 creates a grant program related to preventing suicide by firearm. Specifically, the bill biennially appropriates \$150,000, from which the Department of Health Services (DHS) must award grants to organizations or coalitions of organizations, which may include a city, village, town, or county, or a federally recognized American Indian tribe or band in this state, for any of the following purposes:

- Training staff at a firearm retailer or firearm range on how to recognize a person that may be considering suicide.
- Providing suicide prevention materials for distribution at a firearm retailer or firearm range.
- Providing voluntary, temporary firearm storage for the lawful owner of a firearm.

⁴ Note that this claim applies only in situations when the person who is negligently entrusted with an item injures someone else, and not to self-inflicted injuries. [See, *Stehlik v. Rhoads*, 2002 WI 73.] With respect to self-inflicted harm, Wisconsin courts have adopted an alternate theory of negligent entrustment that requires, in part, a finding that a defendant knew, or in the exercise of reasonable care should have known, that a third party was likely, because of certain forms of legal incompetency, to use the entrusted object in a way that would create an unreasonable risk of harm to the person’s self or others. [See, Wis. JI – Civil 1014.5 (2017); *Halverson v. Halverson*, 197 Wis. 2d 523 (Ct. App. 1995) (adopting the alternate theory of negligent entrustment from Restatement (Second) of Torts s. 390).]

The bill allows DHS to award grants for a duration of up to one year and for an amount of up to \$5,000 to an organization or coalition that contributes at least 20 percent of the grant amount in matching funds or in-kind services. The grant may not be automatically renewed, but the bill does not prohibit a recipient from applying for a subsequent grant in consecutive years. However, when awarding grants, DHS must give preference to organizations or coalitions that have not previously received a grant.

ANALYSIS

You asked how the provisions of Senate Bill 205 may affect the potential liability of a Wisconsin firearms retailer, particularly with respect to state civil claims of negligent entrustment. In short, the bill creates an optional grant program and does not directly affect the liability of a firearms retailer.

As discussed above, a “qualified civil liability action” may not be brought against a Wisconsin firearms retailer who meets the PLCAA’s definition of a “seller,” unless one of the PLCAA’s exceptions apply. Negligent entrustment claims are excluded from the PLCAA’s definition of “qualified civil liability action” and thus may constitute a basis for potential liability for Wisconsin firearms retailers who constitute a “seller” under the PLCAA, assuming a plaintiff’s specific claim for negligent entrustment meets the PLCAA’s definition so as to invoke the PLCAA’s exception for such claims.

The bill does not modify the PLCAA’s protections or related exceptions that are currently applicable in federal and state court proceedings. Rather, the bill creates an optional grant program that specifies certain purposes for which a grant recipient must use the funds, if applied for and received. Specifically, under the bill, an organization or coalition may use the grant funds to: (1) train staff at a firearms retailer on how to recognize that a person may be considering suicide; (2) provide suicide prevention materials dispensed at a firearm retailer; or (3) provide voluntary, temporary firearm storage for a lawful owner of a firearm.

Whether liability will result from a firearms retailer opting to undertake one or more of the acts described above to qualify for grant funds will depend on the facts involved. The relevance, if any, of a retailer’s acts pursuant to the grant program are highly fact specific, and could either support or undercut claims for negligent entrustment, specifically with respect to what the retailer knew or reasonably should have known in a particular situation.

In short, the bill creates a grant program and does not directly affect a firearm retailer’s liability. Whether liability will result from a firearms retailer opting to undertake certain acts to qualify for grant funds depends on the facts of an individual case, including whether a plaintiff pursues a claim that falls within one of the PLCAA’s exceptions, such as negligent entrustment, and whether the types of activities undertaken by the retailer to receive grant funds are relevant to the elements of the claim.

Please let me know if I can provide any further assistance.

AO:ksm



SHAE SORTWELL

STATE REPRESENTATIVE • 2nd ASSEMBLY DISTRICT

Hearing Testimony
Senate Committee on Mental Health, Substance Abuse, and Children and Families
May 3, 2023
Senate Bill 205

Chairman James, my co-author, and members of the Senate Committee on Mental Health, Substance Abuse, and Children and Families – Thank you for giving me the opportunity to speak on SB 205, which relates to grants to prevent suicide by firearm and making an appropriation.

Suicide rates have risen significantly over the last several years. In 2021, Wisconsin lost 888 lives to suicide, many due to firearms. Suicide by firearm leaves little room for a second chance, which plays a factor in why it is utilized. For suicide attempts that do not involve a gun, 4% result in death. However, that result elevates to 90% when a firearm is used.

Intervention plays a big role in preventing gun suicide. Finding constitutional ways (not red flag laws) to do such is integral to saving lives. Having an out-of-home location to safely store a firearm during a time of crisis could be one of those preventative mechanisms for some people.

SB 205 awards grants through DHS to groups that train staff at firearm retailers/ ranges to avoid selling firearms to people who might be considering suicide, provide materials on suicide prevention for distribution, and provide firearm storage, both voluntary and temporary, to the registered owner of the gun. The grant equals \$75,000 for each fiscal year for two years.

I appreciate the opportunity to testify on this legislation and would gladly answer any questions the committee may have.



**VETERANS FOR PEACE
CHAPTER 102
MILWAUKEE, WISCONSIN
VFPChapter102@gmail.com**

Date: May 3, 2023

From: Milwaukee Veterans For Peace Chapter 102

**To: Senate Committee on Mental Health, Substance Abuse Prevention,
Children and Families**

Re: Support For Senate Bill 205

We are unable to participate in today's hearing in person but want to express our strong support for Senate Bill 205 and urge you to recommend it for passage.

Milwaukee VFP Chapter 102 is part of a global organization of military veterans and allies whose collective efforts are to build a culture of peace. Our mission includes support for veterans by advocating for improved Veterans Administration health care, funding community housing and mental health programs, preventing suicides, ending veteran homelessness, and promoting peace in our communities as well as peace abroad.

Senate Bill 205 will provide grants to organizations and local governments aimed at preventing suicides by training people in firearms-related jobs to recognize signs of potential suicide victims, providing suicide prevention materials and – most importantly – encouraging temporary, voluntary storage of firearms for gun owners who may be at risk or considering suicide.

We believe the program will save lives of veterans and others who may be at risk. Someone in Wisconsin dies of suicide every 10 hours, and one in five of them is a veteran, according to Dr. Bert Berger, BeThereWis Task Force Chair. Seventy per cent of veteran suicides are by firearm.

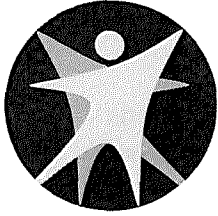
Our chapter is a member of the Veteran Suicide Prevention Task Force, which began in early 2020 with the urgent need to decrease veteran suicides in Wisconsin, chaired by Dr. Berger, Chief of the Mental Health Division of the Zablocki VA Medical Center and in collaboration with the War Memorial Center, Veterans Health Coalition, Medical College of Wisconsin, and many community partners passionate about helping Wisconsin veterans.

One of the task force's existing programs is a gun shop project and safe storage program, in which nearly 40 Wisconsin firearms dealers already participate, promoted by Wisconsin gun shops and the Captain John D. Mason Veteran Peer Outreach Program, on behalf of the Southeastern Wisconsin Suicide Prevention Taskforce and BeThereWis.com. Our chapter is a member of the Southeastern Central Wisconsin Task Force On Veteran Suicide Prevention.

Senate Bill 205 could build on that existing program and expand public awareness and the availability of safe storage facilities. And, as a result, it could save more lives.

Please support this effort and recommend passage of Senate Bill 205. Thank you.

BOB HANSON
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State of Wisconsin
Department of Health Services

Tony Evers, Governor
Kirsten L. Johnson, Secretary

TO: Members of the Senate Committee on Mental Health, Substance Abuse Prevention, Children and Families

FROM: HJ Waukau, Legislative Director

DATE: May 3, 2023

RE: SB 205 relating to: Grants to prevent suicide by firearm and making an appropriation.

The Department of Health Services (DHS) would like to submit written testimony for information only on Senate Bill 205 (SB 205), regarding the requirement of DHS to award grants to organizations or coalitions of organizations, including cities, villages, towns, counties, and federally recognized American Indian tribes or bands, for 1) training staff at a firearm retailer or firearm range on how to recognize a person that may be considering suicide; 2) providing suicide prevention materials for distribution at a firearm retailer or firearm range; or 3) providing voluntary, temporary firearm storage for the lawful owner of a firearm.

Governor Evers has declared 2023 the Year of Mental Health and his budget builds upon that declaration by making significant investments in expanding the availability of mental and behavioral health services across Wisconsin. In total, the Governor's budget invests \$500 million to expand access to mental health care for Wisconsinites.

Governor Evers' budget includes a \$1 million investment for the creation of a Suicide Prevention Program. The program would coordinate suicide prevention efforts across the state; develop and provide educational materials and public awareness campaigns on suicide prevention; conduct suicide prevention trainings for those interacting with at-risk individuals; centralize suicide prevention efforts online; and provide grants specific to the prevention of suicide by firearm by providing for training of staff, distribution of materials at firearm retailers and ranges, temporary firearm storage for lawful firearm owners. While the Joint Committee on Finance recently removed this provision from its version of the 2023-25 biennial budget it is imperative this program be funded in full to help the state best address suicide prevention in Wisconsin.

SB 205 as written similarly mirrors the firearm provision of Governor Evers' Suicide Prevention Program. Firearm-related suicides are on the increase in youth, and of all methods are known to be particularly lethal. SB 205 creates three forms of intervention and prevention, including having an out-of-home location to safely store a firearm during a time of crisis, which could be a helpful option for some, having staff trained in identifying customers who may be suicidal, and providing funds to provide suicide prevention materials for distribution.

Were SB 205 to pass, DHS would need additional funding for 1.0 FTE at an estimated cost of \$87,550 per year, to carry out the provision of these important efforts. Dedicated funding and

position authority would ensure that DHS is able to meet the intent of the funding of the grants for suicide prevention both now and in the future. In order to administer these grants, DHS staff would need to develop the criteria for recipient awards, create a grant funding opportunity, review the application, develop contracts for different organizations and coalitions annually, and monitor the contracts to ensure each grant recipient complies with DHS rules and statutory requirements.

Additionally, DHS would also recommend that the provisions contained within SB 205 be incorporated alongside the statewide Suicide Prevention Program, as proposed in the Governor's budget, so that Wisconsin can enact a more comprehensive solution to address suicide in Wisconsin.

We thank the Committee for the opportunity to provide written testimony for information only of SB 205 and we offer ourselves as a resource for Committee members for any follow up or additional information that may be needed.



Committee on Mental Health, Substance Abuse Prevention, Children and Families

Statement in Support of SB 205

Brady: United Against Gun Violence

5/2/2023

To Senator James, Chair, and members of the Committee:

My name is Anneliese Dickman and I am the Midwest program manager for Brady, one of America's oldest gun violence prevention organizations. Founded in 1974, Brady works across Congress, the courts, and communities, uniting gun owners and non-gun owners alike to take action, not sides, and end America's gun violence epidemic. Our organization today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah's legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence.

Every day, 65 Americans die by gun suicide. These devastating incidents of "family fire" involve someone having access to an improperly stored firearm in the home. Brady's End Family Fire program aims to educate the public on the importance of safe storage practices. Guns in the home increase the likelihood of a fatal outcome in the case of a suicide attempt by 300%. Passing this bill would give families a way to keep guns safely out of the home when necessary.

Brady urges you to support Senate Bill 205, one solution that will help address the gun violence epidemic in Wisconsin. Make no mistake, gun violence is an epidemic, both nationally and here in our state. Over the past 5 years, over 3,000 Wisconsinites lost their lives to guns - and 68

percent of those deaths were suicide deaths.¹ The trends in firearm suicide in Wisconsin mirrors much of what we see in the rest of America: in the U.S. writ large, men (particularly older, white men) have the highest rates of firearm suicide. The same is true, but even more acutely, here in Wisconsin. Nationwide, 78 percent of suicide deaths from firearms are among white men. In Wisconsin, like in many other rural states, that number jumps to 86 percent.² The rural and urban divide in suicide death rates is stark, and it is driven by males who ultimately use firearms to take their own lives.³ Here in Wisconsin, with our proud hunting and farming heritage, I would venture to say that each one of us knows someone who falls into that demographic of being an older, white, male gun owner. Think of those folks--your fathers and grandfathers--when you think of the lives you can save with this bill.

We know that when a firearm is involved in a suicide attempt, the result is most often fatal. Suicide attempts with a firearm result in death a staggering 85 percent of the time, compared to just three percent for other common methods, like intentional drug misuse.⁴ The presence of a gun turns what is frequently an impulsive act (that is usually *not* repeated if the person survives) into an almost-always fatal act. People who choose a firearm over other methods typically do not have the opportunity or ability to summon help or reconsider.

By temporarily removing firearms or making them more difficult to access for individuals in the midst of a crisis, those with suicidal ideation are more likely to survive and get a second chance at life. That second chance is critical: the vast majority - about 90 percent - of people who survive suicide do not ultimately go on to die by suicide later in life.⁵ This is why Brady supports

¹ For the past 5 years for which data is available (2016-2020), according to CDC's WISQARS (Web-based Injury Statistics Query and Reporting System), <https://www.cdc.gov/injury/wisqars/fatal.html>. Wisconsin firearms deaths from 2016-2020 totaled 3,207 and 2,179 of those were firearm suicides.

² For the past 5 years which data is available (2016-2020), according to CDC's WISQARS (Web-based Injury Statistics Query and Reporting System), <https://www.cdc.gov/injury/wisqars/fatal.html>. In that 5 year period, nationally 93,576 white men used a firearm to take their own lives out of a total of 119,475 suicide deaths. In that same 5 year period in Wisconsin, 1,867 white men used a firearm to take their own lives out of a total of 2,179.

³ Paul S. Nestadt, Patrick Triplett, David R. Fowler, and Ramin Mojabai, Urban-Rural Differences in Suicide in the State of Maryland: The Role of Firearms, 107 *American Journal of Public Health* 1548-1553 (2017) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5607660/>.

⁴ Madeline Drexler, ed. "Guns & Suicide: The Hidden Toll," Harvard Public Health Magazine of the Harvard T.H. Chan School of Public Health, available at https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/.

⁵ Harvard T.H. Chan School of Public Health, "Means Matter: Attempters' Longterm Survival," available at <https://www.hsph.harvard.edu/means-matter/means-matter/survival/>

this bill, which would offer families an opportunity to ensure firearms are stored securely away from a loved one suffering a crisis.

The epidemic of gun violence requires a slate of solutions specifically tailored to address the intricacies and root causes in each and every community. The funds provided by this legislation would result in grants to municipalities and local organizations to support solutions tailored to local needs. These funds would also engage the gun industry to play a role in finding solutions, something that we rarely ask them to do.

We all want to keep our families and loved ones safe. Senate Bill 205 would encourage gun owners and gun dealers to start an important dialogue around safe storage and would empower them to take the necessary steps to prevent the tragedy of family fire.

Anneliese Dickman
Midwest Program Manager, Brady
Bayside, WI



Senate Committee on Mental Health, Substance Abuse Prevention, Children and Families

**Testimony Provided by Julia Stanley, Program Manager
Healthy Kids Collaborative
Wednesday, May 3
Re: Support of Senate Bill 205**

Good afternoon, Chairperson James and Members of the Committee,

Thank you for the opportunity to appear before you today to express our support for Senate Bill 205 (SB205). My name is Julia Stanley, and I am the program manager for the Healthy Kids Collaborative at UW Health. The Healthy Kids Collaborative is a coalition of over 450 community partners working together to ensure every child in every neighborhood of Dane County has the opportunity to be healthy.

Over the last three years we have become increasingly alarmed and concerned by the increase in gun deaths in children. The statistics around gun deaths and suicide by firearm are startling.

- In 2020, firearm related injuries became the leading cause of death for children (JAMA).
- In Wisconsin, firearms were the most commonly used method of suicide in 2020 at 51 percent (WI DHS report, 2022).
- In 2020, 62 percent of all deaths by firearm were suicide deaths (WI DHS report, 2022).

The pediatric emergency department at UW Health Kids has seen a 14% increase in children being treated for thoughts of suicide since 2020. While we are only one health system in the state, we know this trend is occurring nationally. When an individual has thoughts of suicide, we know that restricting access to lethal means, like firearms, can be truly lifesaving. Over half of suicide attempts occur within 10 minutes of the impulse.

Gun shop owners and firearm range staff can be critical partners in educating gun owners in suicide prevention and recognizing signs of suicide. They are trusted by gun owners and can be key providers of education and risk assessment. For the past 7 years In Dane County, our partner Safe Communities, has run the Gun Shop Project. Area gun shops provide customers with suicide education materials, and several have offered safe storage for guns during a suicidal crisis. Essential Shooting Supplies, in Mt. Horeb, was awarded a BeSafe award for their leadership on suicide prevention in 2017.

It takes commitment from stakeholders in the public and private sectors coming together to develop and pursue suicide prevention initiatives. To that end, we urge you to support SB205 to provide grant funding to community organizations addressing this complex problem and furthering efforts already underway. UW Health is committed to the health and well-being of all children and we know that collaboration with community partners on prevention can be lifesaving. We thank you for your support in addressing this critical issue facing our entire state.

Thank you for your consideration. I would be happy to take questions at this time.