

Summary of Key Issues in the Concealed Carry Act

The 2011 Wisconsin Act 35 (“Act 35”), permits individuals to carry a concealed weapon if the individual undergoes training and receives a license to carry a concealed weapon. However, in general, businesses (including hospitals) may prohibit an individual from carrying a concealed weapon on their property outside of the individual’s vehicle if the business posts signs providing such notice. The Governor signed Act 35 into law on July 8, 2011 and it was published on July 22. **The first date in which licensees may carry a concealed weapon and businesses must post their property in order to make it a crime to carry a firearm on their property is November 1, 2011.**

A brief executive summary of key issues follows. For additional information and details, see the Detailed Summary on the following pages.

EXECUTIVE SUMMARY

Key provisions of the new Act include:

- License is required - Only licensed individuals may carry a concealed weapon. Licensees are required to carry their license at all times in which they are carrying a concealed weapon.
- Firearms prohibited on posted property - Businesses can prohibit individuals from carrying weapons and firearms on their property, including its buildings, grounds or land (including its owned or occupied parking facilities with one restriction), by giving notice to individuals not to enter or remain in such place with a firearm or weapon. To provide notice the business must post a sign(s) that:
 - Notifies persons of the restriction;
 - Is located in a prominent place near all of the entrances and probable access points of the building or grounds;
 - Is posted so that any individual entering such place would be reasonably expected to see the sign; and
 - Is at least five inches by seven inches.
- Special provisions for parking facilities and vehicles - Pursuant to an amendment to the trespass laws, businesses may prohibit an individual from carrying a firearm outside of his/her vehicle in the business’ parking facility. However, an individual cannot be charged with trespass merely for carrying a firearm in a vehicle driven or parked in the parking facility.
- Employees and concealed weapons - An employer may prohibit an employee from carrying a concealed weapon in the course of the employee’ employment with one exception: an employer may not prohibit an employee from carrying or storing a weapon in the employee’s own motor vehicle.
- Effective date - The first date in which licensees may carry a concealed weapon and businesses must post their property in order to prohibit concealed weapons on their property is November 1, 2011.

WHA has also developed model signage that hospitals may choose to use or modify. Hospitals can access the designs by downloading the PowerPoint compatible files at www.wha.org/NoWeaponsPoster.ppt.

DETAILED SUMMARY

Statutory text

A copy of the text of Act 35 can be found at: <https://docs.legis.wisconsin.gov/2011/related/acts/35>

Effective date

The first date in which licensees may carry a concealed weapon and businesses must post their property in order to prohibit concealed weapons on their property is November 1, 2011.

Prohibiting firearms on non-residential property

In general

Businesses can prohibit persons from carrying firearms on their property, including its buildings, grounds or land (including its owned or occupied parking facilities with one restriction discussed later), if notice is given to the person not to enter or remain in such place. To provide notice, the business must post a sign(s) that:

- Notifies persons of the restriction;
- Is located in a prominent place near all of the entrances and probable access points of the building or grounds;
- Is posted so that any individual entering such place would be reasonably expected to see the sign; and
- Is at least five inches by seven inches.

Failure to abide by the notice may subject the person carrying the firearm to a Class B forfeiture under the trespass law.

Owned vs. leased property

Pursuant to the Act, “The person in control of a nonresidential building [or] grounds of a nonresidential building... (“nonresidential property”) may prohibit a person from entering or remaining on the nonresidential property while carrying a firearm. The posting of signs is required to inform people of such a prohibition.” See <https://docs.legis.wisconsin.gov/2011/related/lcamendmemo/sb93>. Thus, the person that may post such a sign may be either the owner, if that part of the building, grounds, or land has not been leased to another person, or the occupant of that part of the building, grounds, or land. Therefore, if a non-residential property is partly occupied by the owner of the property and partly occupied by a lessee, the owner has the right to post the non-leased portion of the property and the lessee has the right to post the leased portion of the property.

An owner that wants to ensure that all of its leased property is posted should contact its tenants to arrange for the posting of the leased property; in some cases owners of non-residential property may want to revise their leases or building rules or enter into a separate written agreement to ensure the owners’ desires regarding posting and prohibitions of firearms and weapons are met.

Signage requirements

To properly post notice prohibiting the carrying of firearms on non-residential property, one must post a sign that meets the following requirements:

- The sign notifies persons of the restriction;
- The sign is located in a prominent place near all of the entrances and probable access points of the building or grounds;
- The sign is posted so that any individual entering such place would be reasonably expected to see the sign; and
- The sign is at least five inches by seven inches.

The statute does not specifically proscribe what the notice on the sign must say or proscribe the design of the sign other than the sign be at least 5X7 inches. Because there is not a standard design or notice, it is possible that local chambers of commerce or other local business groups, formal or informal, may choose to work together to develop a common, uniform sign for local businesses. Such an option may be attractive for individual hospitals. WHA has also developed model signage that hospitals may choose to use or modify. Hospitals can access the designs by downloading the PowerPoint compatible files at www.wha.org/NoWeaponsPoster.ppt.

As noted earlier in the memo, there is some difference in terminology between “weapon” and “firearm” in the Act. In order to explicitly prohibit both firearms and weapons, hospitals may want to explicitly provide for the prohibition of “firearms and weapons” on their signs.

Nursing homes, hospice, and residential care apartment complexes.

Although nursing homes, hospice facilities, community-based residential facilities, adult family homes under s. 50.01(1), and residential care apartment complexes have some attributes of a “residence,” the Act specifically treats such facilities as “nonresidential” property for purposes of the Act. Thus, such facilities must post their property in the same manner as a hospital in order to prohibit firearms on their property under the Act.

Special cases

The Act makes special provisions regarding 1) “special events” such as a limited access festival open to the public; 2) property owned, occupied, or controlled by the state or any local government unit; and 3) buildings on the grounds of a university or college. For more information on these special situations, please see pages 4 and 5 of the Legislative Council’s memo found here: http://legis.wisconsin.gov/lc/publications/im/IM2011_10.pdf

Prohibiting firearms in residential buildings

Hospitals that also own residential buildings should also be aware of provisions regarding concealed carry on residential property. The statute has differing treatments for individual apartments or condos within a multi-unit residential property and the common areas and grounds of a multi-unit residential property.

Note – as discussed earlier, nursing homes, hospice facilities, community-based residential facilities, adult family homes under s. 50.01(1), and residential care apartment complexes are considered non-residential buildings under the Act.

Individual apartment or condo units.

In general, owners or occupants of individual apartments or condos within a multi-unit residential property can prevent someone that is not the owner or occupant from carrying a firearm in the apartment or condo by providing mere “notice” not to enter or remain at that apartment or condo. No sign is explicitly required. Failure to abide by the notice may subject the person carrying the firearm to a Class B forfeiture under the trespass law.

Common areas and grounds.

With respect to common areas or the grounds of a multi-unit residential property, an owner may prohibit persons that do not live at the property from carrying a firearm in the common areas or grounds of the residential property. The owner must meet the same signage requirements described earlier for a non-residential property in order to prohibit firearms on the grounds or common areas. The sign must:

- Notifies persons of the restriction;
- Be located in a prominent place near all of the entrances and probable access points of the common area or grounds;
- Be posted so that any individual entering such place would be reasonably expected to see the sign; and
- Be at least five inches by seven inches.

Failure to abide by the notice may subject the person carrying the firearm to a Class B forfeiture under the trespass law.

Exceptions for residents

Individuals that live in a unit on a residential property are not subject to the trespass laws established with respect to firearms in the units, common areas, or grounds of a multi-unit residential property. However, if an owner of a multi-unit residential property wants to ensure that its residents also do not carry firearms on the property, the owner should explore amendments to its leases or building rules to help ensure the owner's desires regarding the carrying of firearms and weapons on the property are met.

Limitations on prohibiting firearms in parking facilities

One of the somewhat more confusing aspects of the Act centers on parking facilities. The Act amends the trespass laws to allow a business or residential building owner to prohibit an individual from carrying a firearm outside of his/her vehicle in the business' or residential building's parking facility. However, an individual cannot be charged with trespass merely for carrying a firearm in a vehicle driven or parked in the parking facility. A stated rationale for this distinction is that legislators wanted to ensure that an individual licensed to carry a concealed weapon could store their weapon in their car if the business/residence they were visiting prohibited the carrying of a firearm.

Thus, if a hospital wishes to be able to pursue trespassing charges against an individual carrying a firearm outside of their car in a parking facility, the hospital must post such parking facility in a manner that meets the signage requirements discussed earlier. Thus, an effective sign must be placed at the entrances and probable access points of the parking facility. To reduce confusion, a hospital may want to explicitly state on their "no guns" sign that firearms are to be kept in a locked vehicle. An example is attached to this memo.

Weapons vs. firearms

There is some difference in terminology between the sections of the Act which define and permit "concealed carrying of weapons," and the trespassing sections of the Act governing the prohibition of "firearms" on posted property.

Under the Act, "weapons" which a person may receive a license to carry in a concealed manner are defined as handguns, electric weapons, knives other than switchblades, and billy clubs. The Joint Legislative Council in its memo indicates that because guns such as a shotgun or rifle are not included in the definition of weapon, an individual could not legally carry a shotgun or rifle in a concealed manner. See http://legis.wisconsin.gov/lc/publications/im/IM2011_10.pdf.

However, the portion of the Act governing the posting of property and trespassing laws refers to "firearms" and not "weapons." It would appear that "firearm" includes guns that are not "weapons," like shotguns and rifles, but does not include concealed "weapons" like a knife or taser. Thus, "firearm" is potentially both more broad and less broad than "weapon."

It is arguable that as the trespassing provisions of the Act are written, a person carrying a concealed "weapon" that is not a "firearm," such as a concealed knife or taser, could be charged with trespass even if no notice prohibiting such item were posted. However, to make its prohibition clear regarding such non-firearm concealed weapons, hospitals that wish to prohibit all guns and weapons from their property may want to consider including both the terms "firearms" and "weapons" on their posted notices.

Employees

Pursuant to the Act, an employer may prohibit an employee from carrying a concealed weapon in the course of the employee's employment. However, an employer may not prohibit an employee, as a condition of employment, from

carrying or storing a “weapon,” **in the employee’s own motor vehicle**, regardless of whether the motor vehicle is used in the course of employment or whether the motor vehicle is driven or parked on property used by the employer.

Immunities

To help encourage employers and property owners/occupants to allow the carrying of concealed weapons, the Act provides certain immunities, including:

- A person who does not prohibit an individual from carrying a concealed weapon on property that the person owns or occupies is immune from any liability arising from his or her decision.
- An employer who does not prohibit one or more employees from carrying a concealed weapon is immune from any liability arising from that decision.

Additional Information

WHA will be presenting a webinar, “Concealed Carry and Implications for Hospitals,” on Wednesday, August 3 from 12:00 noon to 12:30 PM. You can register for the webinar at: <http://events.SignUp4.com/ConcealCarry>. If multiple individuals from your hospital wish to participate on this webinar, please arrange to call in to the webinar using a single phone line.

In addition, the Wisconsin Legislative Council, an agency of the Wisconsin Legislature that provides nonpartisan legal, scientific, and research services, has produced two memos that provide additional information on the Act and on Senate Bill 93 which became Act 35. You can find those memos at the links below:

- http://legis.wisconsin.gov/lc/publications/im/IM2011_10.pdf
- <https://docs.legis.wisconsin.gov/2011/related/lcamendmemo/sb93> (In this memo, “current law” refers to law prior to the enactment of Act 35. “Senate Substitute Amendment 2” refers to the bill that became law as Act 35)

Initial steps to take

- Review your policies, leases, and building rules regarding firearms and weapons. Update as necessary.
- Make personnel aware of your policies and any updates (especially security).
- If you choose to prohibit firearms and weapons at your facilities:
 - Identify locations where you will need to post signs
 - Develop a sign(s). WHA has provided a template that hospitals may use and modify. You may also want to check to see if your local chambers of commerce or other local business group has developed a sign.
 - Post your signs by November 1.

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