



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Carrying and Possessing Firearms in Wisconsin

2011 Senate Bill 93, as amended, was approved by the Wisconsin Senate and Assembly in June 2011. This bill relates to going armed with weapons, possessing or transporting a firearm, disorderly conduct limitations, and electric weapons. This Information Memorandum provides a description of some of the primary provisions of the bill affecting a person's ability to carry or possess a **firearm** in Wisconsin. For a more thorough description of the other provisions in Senate Bill 93 please see the Amendment Memo on Senate Substitute Amendment 2 to the bill at www.legis.state.wi.us/lc.

INTRODUCTION

2011 Senate Bill 93, as passed by both the Senate and the Assembly, would make a number of changes to the places and the manner in which a person may carry or possess a firearm in this state.¹ Some of the important distinctions used in this memorandum are briefly noted below, followed by a description of the provisions of the bill affecting firearm carrying and possession, in question and answer format and broken down by whether the changes affect concealed carry license holders, people who do not obtain a concealed carry license, or both.²

“Carry” Versus “Possession”

The majority of the provisions of the bill relate to restrictions on a person's ability to “carry” a firearm. The bill defines “carrying” a firearm to mean to “go armed with” a firearm. The phrase “go armed with,” as it would relate to a firearm, has been defined by the Wisconsin courts to mean that the firearm was on the individual's person or was within the individual's reach and the individual was aware of the presence of the firearm. However, Wisconsin courts generally do not treat having an unloaded and encased firearm within one's reach as “going armed with” the firearm.³

¹ The bill also includes specific provisions related to the places and manner in which law enforcement officers, out-of-state officers, and former officers may possess firearms. These provisions are not described in this memorandum.

² This memorandum only applies to people that are not prohibited from possessing a firearm under state or federal law.

³ For instance, in *State v. Walls*, 190 Wis. 2d 65 (Ct. App. 1994), the Court of Appeals recognized that the placement, possession, or transportation of unloaded and encased firearms in vehicles as permitted by § 167.31 (2) (b), Stats., does not constitute going armed with a concealed weapon.

Some provisions under current law and under the bill relate to where and how a firearm may be possessed or transported. In this memorandum, the term “possession” of a firearm will be used to describe a situation in which a person may have a firearm on his or her person or within his or her reach, and may be transporting the firearm, but the person is not considered to be “going armed with” the firearm.

Some of the court decisions and statutory provisions described below use the phrase “go armed with” while the new provisions that would be added to the statutes under this bill replace this phrase with the term “carry.” For purposes of consistency in this memorandum, the term “carry” is used whether the bill, court decisions, or existing statutes use the term “carry” or the phrase “go armed with.”

“Open Carry Versus Concealed Carry”

The bill makes numerous references to carrying concealed firearms and to carrying firearms that are not concealed. For a firearm to be considered “concealed,” Wisconsin courts have said that it must be hidden from ordinary view.⁴ This memorandum refers to the carrying of firearms that are not concealed as the “open carry” of those firearms.

“Weapon”

The bill defines a “weapon” as a handgun, an electric weapon, a knife other than a switchblade knife, or a billy club. This term does not include firearms other than handguns, such as shotguns or rifles. Where the bill seeks to regulate firearms other than handguns, it refers to these as “firearms that are not weapons.”

“Handgun”

The bill defines “handgun” as any weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore. This term does not include certain prohibited types of firearms such as a machine gun, a short-barreled rifle, or a short-barreled shotgun.

CHANGES THAT APPLY TO PEOPLE WITHOUT REGARD TO WHETHER A PERSON IS A CONCEALED CARRY LICENSEE

Some of the provisions in the bill apply to a person regardless of whether he or she is a concealed carry licensee. The following questions and answers relate to these general provisions:

What general changes does the bill make to the restrictions on possessing a firearm in or on a vehicle?

The bill makes a number of statutory changes with respect to the placement, possession, and transportation of handguns in various types of vehicles. Specifically, the bill:

⁴ Wisconsin courts have interpreted the term “concealed” broadly with respect to firearms in vehicles, holding that a firearm in a vehicle is concealed if it is indiscernible from the ordinary observation of a person located *outside* and within the immediate vicinity of the vehicle.

- Permits placing, possessing, or transporting a loaded and unencased handgun in a vehicle.⁵
- Permits loading a handgun in a vehicle.
- Permits operating an all-terrain vehicle with a loaded and unencased handgun.
- Permits placing, possessing, or transporting a loaded handgun in or on a motorboat with the motor running.
- Permits placing, possessing, or transporting a loaded and unencased handgun in or on a noncommercial aircraft.

Does the bill allow a person to carry a firearm in the person's own home or the person's place of business?

Yes. The bill authorizes a person to carry a concealed weapon in his or her own dwelling or place of business or on land that he or she owns, leases, or legally occupies, without regard to whether the person is a concealed carry licensee.

Does the bill place any restrictions on the open carry of firearms?

The bill specifies that it should not be interpreted to limit an individual's right to openly carry a firearm, other than the specific limits included in the bill. For instance, the bill specifies a list of places where a licensee may not carry a concealed firearm or openly carry a firearm, including certain public buildings. Other examples of limits on open carry under the bill and under current law are noted below.

Can a person be prevented from carrying a firearm on private or public property?

Yes, with some limitations. The bill creates a list of provisions under trespass law under which a person or entity that owns or occupies property, referred to in this memorandum as the "person in control" of the property, the state or local governmental units, and organizers of special events may restrict access to certain property by people who are carrying firearms. Where a sign is required to notify people of such a restriction, the sign must be at least 5" x 7" and must state the restriction. Signs must be placed in a prominent place near all of the entrances to the part of the building to which the restriction applies or near all probable access points to the grounds or land to which the restriction applies, as applicable, where any individual entering the building, grounds, or land can be reasonably expected to see the sign.

These new trespass provisions apply to both licensees and people who are not licensed and to concealed and open carry, and most of these provisions do not apply to parts of buildings, grounds, or land that are used for parking if the firearm is in a vehicle driven or parked in the parking area. The following seven questions relate to these trespass provisions:

⁵ The bill eliminates the ***general*** prohibition against possessing or transporting a loaded, unencased firearm in a vehicle, but restrictions related to more specific situations may still apply. For instance, current law generally prohibits "shining" of wild animals while in the possession of a firearm and the possession of a light with intent to use it for shining wild animals while in the possession of a firearm. These prohibitions will remain in effect under the bill.

Can the owner of a single-family residence restrict access to his or her property by people carrying firearms?

Yes. Such a restriction may apply to the residence and the rest of the parcel of land. The bill does not specify the method that the owner must use to notify people of the restriction.

Can a person who leases or owns a unit in a multi-family residence restrict access to the multi-family residence by people carrying firearms?

Yes, but the person may only place such a restriction on the person's own residential unit. The bill does not specify the method that must be used to notify people of the restriction.

Can a person in control of the common areas in and the grounds of a multi-family residence restrict access to the property by people carrying firearms?

Yes, but the person may only place such a restriction on the common areas and grounds, and that restriction would not apply to people who lease or own a residential unit in the residence. This type of restriction requires posting of signs.

Can organizers of special events like Summerfest restrict access to the special event grounds by people carrying firearms?

Yes. "Special event" is defined by the bill to mean "an event that is open to the public, is for a duration of not more than 3 weeks, and either has designated entrances to and from the event that are locked when the event is closed or requires an admission." Signs must be posted to notify people of the prohibition.

Can people be prohibited from carrying firearms in publicly owned buildings?

The state or a local governmental unit⁶ may prohibit a person from entering or remaining in a building that is owned, occupied, or controlled by the state or the local governmental unit ("publicly controlled building") while carrying a firearm. This provision does not apply to publicly controlled buildings that are listed as specific locations for which the carrying of firearms would be prohibited for licensees, described below. People must be notified of these prohibitions by the posting of signs, and these prohibitions would not apply to people who lease residential or business premises in a posted, publicly controlled building.

A state or local governmental unit generally may not prohibit a person from entering or remaining on the grounds of a publicly controlled building while carrying a firearm, unless another provision authorizing such a prohibition applies. For example, if a special event is held on the grounds, the organizer may be able to prohibit the carrying of firearms, as described above.

⁶ "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of the political subdivision or special purpose district or a combination or subunit of any of the foregoing.

Can a university or college prohibit the carrying of firearms on campus?

A university or college may prohibit a person from entering or remaining in a privately or publicly owned building on the grounds of a university or college while carrying a firearm, if signs are posted indicating this prohibition. Such a prohibition would not apply to a person who leases residential or business premises in the building.

The university or college may not prohibit a person from entering or remaining on the grounds of the university or college while carrying a firearm unless another provision authorizing such a prohibition applies. For example, if a special event is held on the grounds, the organizer may be able to prohibit the carrying of firearms, as described above.

Can the person in control of other nonresidential property prohibit the carrying of firearms on these properties?

The person in control of a nonresidential building, grounds of a nonresidential building, or other land not listed above (“nonresidential property”) may prohibit a person from entering or remaining on the nonresidential property while carrying a firearm.⁷ The posting of signs is required to inform people of such a prohibition.

CONCEALED CARRY LICENSEES

The bill creates a system by which a person may apply for a license to carry a concealed weapon. The bill specifies that a licensee may carry a concealed weapon anywhere in this state except as prohibited under the bill. The following questions and answers relate to firearms carrying and possession by a concealed carry licensee:

If I am a licensee, in what specific places am I expressly prohibited from carrying a firearm?

The bill generally prohibits a licensee from knowingly carrying any type of firearm, whether concealed or openly carried, in police stations and other types of law enforcement offices, correctional buildings, portions of buildings that are courthouses, municipal courtrooms when court is in session, beyond the security checkpoint in an airport, and other specified locations. These prohibitions do not apply to firearms in vehicles driven or parked in a parking facility in one of these prohibited locations and exceptions apply to the courthouse prohibition for certain people including judges and prosecutors.

Under the bill, a licensee is also generally prohibited from intentionally carrying a handgun on any premises where alcoholic beverages may be sold if the licensee is consuming alcohol on the premises.

⁷ The bill specifies that the following are defined as nonresidential facilities and are therefore subject to a prohibition against the carrying of firearms imposed by the management of the facility: a nursing home, a community-based residential facility, a residential care apartment complex, an adult family home, and a hospice.

If I am a licensee, may a person prevent me from carrying a firearm on his or her property?

Yes. Under current law, it is illegal to enter or remain on any land of another person after being notified by the owner or occupant not to enter or remain on the premises. The bill specifies that this existing statutory provision does not apply to licensees if the intent of the person in control of the property is to prevent licensees from carrying firearms on the property; however, the bill also adds new trespass provisions that specify the means by which a person may prevent people from carrying firearms on certain property. These added provisions are described above.

If I am a licensee, can my employer prohibit me from carrying a concealed weapon in the course of my employment?

Yes. The bill authorizes employers to prohibit a licensee who it employs from carrying a concealed weapon or a particular type of concealed weapon in the course of the licensee's employment, but such a prohibition does not apply to the employee's personal vehicle, even if that vehicle is used in the course of employment.

Does the bill allow me to carry a firearm within a school zone if I am a licensee?

Under current law and subject to a number of exceptions, a person is prohibited from knowingly possessing a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone. A school zone is defined as in or on the grounds of a school or within 1,000 feet of the grounds of a school. The bill exempts licensees from the prohibition against the possession of a firearm within 1,000 feet of the grounds of a school.⁸ The general prohibition against carrying a firearm on school grounds applies to licensees unless they meet one of the current exceptions to that prohibition.

May I carry a concealed rifle or shotgun if I am a licensee?

No. The bill allows a person to carry concealed "weapons" which only includes firearms that are handguns, as defined above. Rifles and shotguns would remain subject to the general prohibition against carrying concealed and dangerous weapons.

Does the bill make any changes to statutory restrictions on the possession of firearms in state parks, state fish hatcheries, or wildlife refuges?

Yes. State statutes generally prohibit the possession of firearms in state parks, state fish hatcheries, or wildlife refuges unless the firearm is unloaded and enclosed in a carrying case. The bill creates

⁸ Federal law also prohibits a person from knowingly possessing a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone, and provides a number of exceptions to this prohibition. One of those exceptions applies to individuals who are licensed to possess a firearm by the state in which the school zone is located, where the law of that state requires that, before an individual obtains such a license, the law enforcement authorities of the state verify that the individual is qualified under law to receive the license. This exception would appear to apply to people who become concealed carry licensees under the bill and who are Wisconsin residents. The bill also includes a provision stating that for purposes of federal law, an out-of-state licensee is considered to be licensed by the State of Wisconsin. It is not clear whether this statement is sufficient to invoke the exception to the federal school zone law with respect to out-of-state licensees.

exceptions from these prohibitions for licensees, if the firearm is a handgun. Trespass provisions described above may still be made applicable to buildings, the grounds around buildings, or other land on these types of properties depending on the ownership of the property.

PEOPLE WHO DO NOT OBTAIN CONCEALED CARRY LICENSES

The following questions and answers relate to the carrying and possession of firearms by a person who elects not to obtain a concealed carry license:

What are the general restrictions on whether I may carry a concealed firearm in this state if I am not a licensee?

The bill expressly authorizes a person to carry a concealed handgun in his or her own dwelling or place of business or on land that he or she owns, leases, or legally occupies, without regard to whether the person has obtained a concealed carry license. Other than that, a person who does not obtain a concealed carry license is generally prohibited from carrying a concealed firearm in this state.

A narrow exception to this general rule has also been recognized by the Wisconsin Supreme Court for situations in which a person must carry a concealed weapon in the exercise of the person's constitutional right to bear arms, for instance if the carrying of the weapon is related to the security of a private residence or a privately operated business. The test that the court has developed for determining if this exception applies to a particular situation requires the defendant to show that the defendant's interest in concealing the weapon substantially outweighs the state's interest in enforcing the concealed weapons statute and that the defendant concealed his or her weapon because concealment was the only reasonable means under the circumstances to exercise his or her right to bear arms. To date, this exception has not been applied to locations other than those limited locations where a person without a license is authorized under the bill to carry a concealed firearm, as noted above.

In what specific places am I expressly prohibited from carrying a firearm if I am not a licensee?

Under current law, a person is generally prohibited from carrying a firearm in a building owned or leased by the state or any political subdivision of the state.⁹ A person is also generally prohibited from intentionally carrying a handgun where alcoholic beverages may be purchased and consumed on the premises. These prohibitions apply to both concealed carry and open carry and remain the same for nonlicensees under the bill.

If I am not a licensee, may a person prevent me from carrying a firearm on his or her property?

Yes. Under current law, it is illegal to enter or remain on any land of another after being notified by the owner or occupant not to enter or remain on the premises. The bill does not change this authority with respect to people who are not licensees. Also, the trespass provisions created under the bill and

⁹ "Political subdivision of the state" is not defined in the bill or in the statutory chapter in which this provision will be placed, but generally refers to counties, cities, villages, and towns.

described in more detail above specify additional means by which a person may prevent licensees and nonlicensees from carrying firearms on certain property.

Does the bill allow me to carry on school grounds or within a school zone if I am not a licensee?

No. Under current law and subject to a number of exceptions, a person is prohibited from knowingly possessing a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone. A school zone is defined as in or on the grounds of a school or within 1,000 feet of the grounds of a school. The bill reduces the state penalty for possession of a firearm within 1,000 feet of the grounds of a school but does not eliminate the prohibition for people who are not licensees.

Does the bill allow me to place, possess, or transport a loaded, unencased handgun in a vehicle?

As described above, the bill does allow the placement, possession, and transportation of handguns in a number of different types of vehicles, regardless of whether a person is a licensee. However, if a person is not a licensee, the handgun cannot be concealed in the vehicle and, as noted above, Wisconsin courts have taken a broad view of what constitutes the concealment of a firearm in a vehicle.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Larry Konopacki, on July 1, 2011.

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