On November 1, 2011, when the “concealed carry” provisions of 2011 Wisconsin Act 35 took effect, Wisconsin became the 49th state to permit the carrying of concealed weapons. This memorandum reviews Act 35’s principal requirements insofar as they may affect churches—typically congregations—and other religious organizations. As explained below, Act 35 expanded the circumstances under which individuals may carry concealed weapons. The Act also allows property owners and employers to prohibit firearms on their premises (but not their parking facilities) and specifies the signage required to implement the prohibition. Property owners and employers deciding not to prohibit the carrying of concealed weapons will be immune from any liability resulting from the decision.

Right to Concealed Carry Under Act 35

Under prior Wisconsin law, carrying a concealed weapon was illegal. Act 35 allows individuals to apply for a license from the Wisconsin Department of Justice to carry a concealed weapon. A “weapon” is defined to include a handgun, a taser device, and a billy club. Licensed individuals must be Wisconsin residents who are at least 21 years old,

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2 Wis. Stat. § 941.23 (providing in relevant part: “Any person except a peace officer who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor.”). Most of the remaining statutory references in this memorandum are to statutes amended or created by Act 35.

3 Wis. Stat. §§ 175.60(1)(bm), (j). The definition of “handgun” excludes a machine gun, a short-barreled rifle, and a short-barreled shotgun.
Concealed weapons may be kept in a vehicle driven or parked in a parking facility for any of the listed buildings except schools. Wis. Stat. § 175.60(16)(b).
Right to Prohibit Firearms or Concealed Weapons

A church congregation is likely to be both an owner or occupier of real estate and an employer. Act 35 allows property owners and employers to prohibit licensed individuals (and anyone else) from carrying firearms on their property in accordance with statutory guidelines. Because a church congregation is a corporate entity, a decision to prohibit weapons should be made at a properly called meeting by the congregation council or the congregation and documented by a written resolution.

Prohibition by Property Owners

Wisconsin law has long allowed owners and tenants to restrict access to their property. Entering the land of another without actual or implied consent may constitute trespassing. Act 35 amends prior trespassing law by allowing a property owner or tenant to restrict the right of another person to enter a nonresidential building with a firearm. Specifically, an individual could be fined for entering or remaining in “any part of a nonresidential building, grounds of a nonresidential building, or land that the [individual] does not own or occupy” after being given notice that firearms are not allowed. While the statute mentions only “firearms,” a church or other property owner would have the right to restrict the possession of other weapons on its property. This right, however, does not extend to a vehicle parked on the property. A property owner cannot prohibit a firearm “if the firearm is in a vehicle driven or parked in the parking facility.”

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6 Act 35 does not define the term “employer” so the term would be given its ordinary meaning. Wis. Stat. § 990.01(1). An employer is ordinarily defined as an entity paying wages or salaries for work performed by others in circumstances where the entity has the right to control and direct the means of how the work is performed. See Black’s Law Dictionary 525 (6th ed. 1990). In a Lutheran congregation, the pastor(s) and clerical and maintenance support staff would be employees of the congregation.

7 Id. § 943.13(1m)(c)2. A “nonresidential building” includes a church building. By statute, a nursing home, a community-based residential facility, a residential care complex, an adult family home, and a hospice are also included in the definition of a “nonresidential building.” Id. § 943.13(1e)(cm). Provisions of Act 35 relating to single-family and multi-family residences, special events, governmental buildings, and university and college buildings are not discussed here.

8 See CCW FAQ pp. 20–21.

9 Wis. Stat. § 943.13(1m)(c)2.
In order to impose any restriction, a property owner must give proper “notice” that firearms and other weapons are prohibited. Under Act 35, notice of the prohibition may be given personally—either orally or in writing—or by posting.\textsuperscript{10} As a practical matter, notice should be accomplished by posting. In the case of a building, notice through posting requires signage meeting three requirements:

- The sign must be at least 5 inches by 7 inches in size.
- The sign must state the restriction imposed, e.g., that firearms and other weapons are prohibited.
- The sign must be located in a prominent place near all of the entrances to the building and all probable access points to the grounds where it can reasonably be expected to be seen by people entering the building or grounds.\textsuperscript{11}

According to the Wisconsin Department of Justice: “At a minimum the sign must inform people that weapons or firearms are prohibited. There are a number of messages that would meet the standard and the ultimate purpose of the sign is to put individuals on notice of the prohibition or limitation.”\textsuperscript{12}

**Prohibition by Employers**

Act 35 allows an employer to prohibit its employees from carrying a concealed weapon during the course of all or a part of their employment even if they are licensed.\textsuperscript{13} The restriction cannot extend to the employee’s personal vehicle. An employer is not allowed to prohibit a licensed employee from carrying or storing a concealed weapon or ammunition 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.”\textsuperscript{14}

\textsuperscript{10}Id. § 943.13(2)(am) (intro.).
\textsuperscript{11}Id. § 943.13(2)(bm).
\textsuperscript{12}CCW FAQ p. 25.
\textsuperscript{13}Wis. Stat. § 175.60(15m)(a).
\textsuperscript{14}Id. § 175.60(15m)(b).
A congregation or other church body, like any other employer, could impose the restrictions described above on its own employees. The restrictions should be included in the congregation’s employee handbook or human resource policies and appropriate signs should be posted. The congregation should also be prepared to enforce the restrictions by taking appropriate counseling or disciplinary measures against employees who fail or refuse to follow the rules.

The Immunity Issue

In deciding on a course of action, a church congregation or other organization should also consider the potential implications of Act 35’s immunity provisions. The law includes a grant of immunity from liability, but the immunity applies only when visitors or employees are not restricted from carrying concealed weapons. The relevant statutory language—Wis. Stat. § 175.60(21)(b)–(c)—states as follows:

(b) A person [which would include a corporate entity like a congregation] that 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 its decision.

(c) An employer that 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 its decision.

In other words, a congregation—both as a property owner and as an employer—is not immune from liability if it does prohibit concealed weapons on its property. If the congregation decides not to prohibit concealed weapons, it “is immune from any liability arising from its decision.” The foregoing language raises a very Lutheran question: What does this mean? Unfortunately, the answer is not clear.

Suppose someone is injured at a congregation’s worship center due to gun violence. Before Act 35 took effect, the congregation’s liability would depend upon whether the injured person was a member or visitor to the congregation or an employee. In the case of a member or visitor, the central legal issue would be whether the congregation had somehow been negligent. The court or jury would have to consider whether the
congregation’s leaders knew or should have known that an injury due to gun violence was foreseeable, perhaps because of prior threats by the shooter or other conduct that would suggest to reasonable people that the shooter posed a danger and that precautions should be taken. In the absence of such warning signs, the congregation would argue that it should not be held legally responsible for the shooter’s violent behavior. If the injured person were an employee of the congregation, the issues might well be analyzed under the Wisconsin Worker’s Compensation Act.\textsuperscript{15} Depending on the particular circumstances, injuries suffered during the course of employment are normally remedied under the Worker’s Compensation Act.\textsuperscript{16}

How would Act 35 affect this hypothetical situation? One analysis would be that a congregation allowing concealed weapons on its property should be immune from any liability.\textsuperscript{17} After all, the statute specifically states that a property owner or employer deciding not to prohibit concealed weapons is “immune from any liability arising from its decision.”\textsuperscript{18} Thus, a congregation deciding to prohibit concealed weapons would be forfeiting the statutory immunity that would otherwise be available.

On the other hand, a congregation that prohibits concealed weapons might be advertising its potential vulnerability. A person bent on using a handgun to cause harm would not likely be deterred by a sign prohibiting concealed weapons. But such a sign would deter a law-abiding congregational member from bringing his or her handgun to church. Such a member would not be able to intervene in a violent situation.

It bears mention that a congregation that became aware of a potential for violence would reasonably be expected to take steps to seek the necessary help whether or not legal immunity applies. The immunity extends only to liability resulting from the decision to

\textsuperscript{15}The Wisconsin Worker’s Compensation Act applies to any individual or organization that has three or more employees. Wis. Stat. § 102.04(1)(b)1. An employer with fewer than three employees but that has a payroll of at least $500 in any calendar quarter for work performed in Wisconsin becomes subject to the Act on the tenth day of the next succeeding month. \textit{Id.} § 102.04(1)(b)2.

\textsuperscript{16}Id. § 102.03(1)(c)1.

\textsuperscript{17}See CCW FAQ p. 20: “If an employer allows the carrying of concealed weapons and someone is injured or killed as a result of a license holder using the weapon, is the employer legally liable? [Answer] Generally, no.” The Department of Justice adds that “there may be circumstances where such liability may exist . . . .”

\textsuperscript{18}Wis. Stat. § 175.60(21)(b)–(c).
allow weapons, and theoretically might not apply in a situation where the congregation negligently ignored warning signs of impending violence. The legal situation of a congregation that decides to prohibit concealed weapons would be the same after Act 35 became effective as it was before: potential liability for negligence causing harm to a member or visitor and potential liability under worker’s compensation law for harm caused to an employee. Further, it could be argued that churches should remain safe places for prayer and reflection and that allowing concealed weapons is fundamentally inconsistent with this concept whether or not immunity is available.

Wisconsin’s concealed carry law obviously raises a variety of substantive and complicated issues that church organizations may want to analyze in the context of their own circumstances. This memorandum is intended only to summarize Act 35 and highlight some of the principal concerns that churches should consider. Nothing in this memorandum constitutes legal advice. Each congregation will have to deal with the law based on the advice of its own pastor(s), insurance advisers, and legal counsel.