



CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE
27TH ASSEMBLY DISTRICT

August 14, 1997

To: The Members
Assembly Committee on Consumer Affairs

From: Representative Clifford Otte, Chair *C.O.*

MEMO

On August 14, 1997, the following clearinghouse rule was referred to the Assembly Committee on Consumer Affairs:

Clearinghouse Rule 97-048, relating to credentialing requirements and procedures for private detective agencies, private detectives and private security persons.

The deadline for committee action on this rule is **September 14, 1997**. Please find herewith a copy of the rule. If you are interested in requesting a hearing and/or submitting comments, please do by **August 28, 1997**.

Assembly

Committee Report

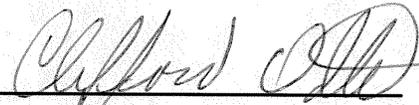
The committee on **Consumer Affairs**, reports and recommends:

Clearinghouse Rule 97-048

Relating to credentialing requirements and procedures for private detective agencies, private detectives and private security persons.

Submitted by the Department of Regulation and Licensing.

September 15, 1997 - NO ACTION TAKEN



Representative Clifford Otte
Chair

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 97-048)**

TO: Ben Brancel
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the DEPARTMENT OF REGULATION AND LICENSING is submitting in final draft form proposed rules relating to credentialing requirements and procedures for private detective agencies, private detectives and private security persons.

If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

Administrative Rules in Final Draft Form

Department of Regulation and Licensing

Relating to: Private Detective Agencies, Private Detectives and Private Security Persons

Clearinghouse Rule: No. 97-048

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

Committed to Equal Opportunity in Employment and Licensing

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
DEPARTMENT OF REGULATION : ON CLEARINGHOUSE RULE 97-048
AND LICENSING : (s. 227.19 (3), Stats.)

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

This rule proposal contains many amendments which relate to the titles of the chapters of the current rules, the statutory authority for each chapter, and the form, style, placement, clarity, grammar, punctuation, and plain language of the current rules.

This rule proposal also incorporates changes that are required by the enactment of 1995 Wisconsin Act 461. Such changes include provisions relating to: 1) the new authority and responsibility given to the department relating to the granting of permits to private security persons; 2) the creation of separate sections for each type of credential; 3) the prohibition against licensing a person who has been convicted of a felony unless pardoned; 4) the requirement that applicants pay the department for the cost of record searches; and 5) a clarification relating to the definition of private security person.

Other changes eliminate the following: 1) the requirement that applications be notarized; 2) the requirement for an applicant to provide his or her employment record for the 10 years immediately preceding the date of application; and 3) the requirement that fingerprints on fingerprint cards be taken by a law enforcement officer. Finally, a requirement is created for the department to provide reasonable accommodations to applicants with disabilities who are otherwise qualified.

Some changes relate to the administration, the contents and the review procedures for the private detective licensing examination. The section relating to admission cards is

repealed, because no admission cards are needed for a person to schedule himself or herself to take the examination which is now administered by computer.

The current requirement that a private detective agency must obtain a separate license if it operates an office, branch, department or division under a name which is different from that of the principal office is unnecessary. The proposed rule simply requires the agency to inform the department of a new or additional name under which it will operate before the agency begins operating under that name. The proposed rules distinguish between the requirements for a private detective and a private security person to notify the department about a transfer or termination of employment by a private detective agency. The proposed rules clarify a policy which is not very clearly stated in the current rules, that a private detective agency that permits an owner or employe to carry a firearm while on duty must obtain a comprehensive general liability policy with certain specific coverages. The rules permit a private detective agency to assign armed security personnel when the client and the agency agree in writing to do so, rather than, as in the current rule, when the client of the agency requests such assignments.

This rule proposal clarifies a recent change by stating the conditions for carrying a loaded weapon in a vehicle. The current rule implies "loaded," but does not say "loaded." The proposal permits firearms proficiency certifiers to satisfy the annual 6-hour retraining requirement by conducting the 6-hour refresher course, rather than attending a course presented by another firearms proficiency certifier. The provision relating to the fact that conviction of a crime is a ground for discipline is modified to conform with 1995 Wisconsin Act 461.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on May 23, 1997. Daniel Miller of Madison, representing the Professional Association of Wisconsin Licensed Investigators testified in favor of the proposed rules. Written comments were received from Gary M. Wise, Badger State Detective Agency (Kewaunee), suggesting the separation of the licensure of security companies from private detective agencies. This suggestion requires a statutory change and is not germane to this rule-making.

Letters were received from Steve Grubbs (Davenport, IA) and Lisa Rossi (Green Bay) of Per Mar Security Services, requesting that crowd control persons not be required to obtain a permit as a private security person. The department's Security Guard Advisory Committee (consisting of 6 security guard company representatives, a business entity vice president of security, a sheriff, a police officer, a vocational-technical college educator and 2 public members) discussed the crowd control issue at its meeting of July 16, 1997. Representatives of Per Mar Security Services were present and participated in the discussion. The committee unanimously passed a motion, suggesting that the rules should not refer to "crowd control services" and that the rules should clarify that ushers, ticket-takers and/or event attendants are not private security persons, provided that they

public safety persons, as well as comply with other conditions stated in SECTION 9 of the rule proposal.

Per Mar Security representatives subsequently informed the department that the changes recommended in the motion and inserted in this rule proposal adequately respond to their concerns.

The rule amendments in SECTION 9 reflect changes which relate to Per Mar's request.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Section 1. The phrase "incurred by the department in obtaining information related to the eligibility and qualifications of the applicant" was added to the sections identified by the Clearinghouse reviewer.

Section 2.a., b., d., e., h., i. and k. The suggested amendments were made.

Section 2.c. The reviewer suggested that the revisions would be easier for the reader to determine the changes if certain sections were amended, rather than repealed and recreated. The department agrees with the observation, but did not make the significant amendments which would be required, because the rule draft was made available to licensees, committee members and others, and the changes will be able to be more easily noted, if the draft is not radically revised at this time with structural, but nonsubstantive changes.

Section 2.f. The reviewer's suggestion resulted in adding the accommodations-for-disabilities language to ss. RL 31.03 and 31.036.

Section 2.j. The reviewer's suggestion resulted in changing the citation to s. RL 31.02 (1) (b).

Section 5.a. The reviewer's suggestion resulted in creating s. RL 31.036 (1).

Section 5.b. The reviewer's suggestion resulted in the elimination of any language as to who may roll fingerprints.

Section 5.c. The department changed "person's" to "applicants," as suggested.

Section 5.d. A sentence was added to s. RL 31.036 (4).

Section 5.e. Changed.

Section 5.f. A sentence was added to subd. 4. Also, sub. (7) (c) was changed.

Section 5.g. The department removed "different than or."

Section 5.h. The department removed the last sentence and created s. RL 31.035 (1) (h).

Section 5.i. The department added "must or."

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 97-048)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to repeal RL 30.02 (12) (b) 3., 31.04 (2), 32.04 (2) and 34.04 (3); to renumber and amend RL 31.03 (3); to amend RL 30.01, 30.02 (1), (7) (b), (11), (12) (a) 1., 2.e., (b) 2. and 5., ch. RL 31 (title), 31.01 (title), 31.02 (1) (a), (b) (intro.) and 1., (2) (a), 31.04 (8) (title) and (8), 32.04 (title) and (1), 32.07 (1) (b) and (2), 34.01 (1) (b) and (d), 34.011 (title) and (intro.), 34.02 (3), 34.08, ch. RL 35 (title), 35.01 (intro.), (1), (2), (3), (10), (13), (17), (19), (22) and (23) and 35.03 (2); to repeal and recreate RL 30.02 (13), 31.01 (1), 31.03, 31.04 (3), (4), (6), (7) (b) and (c), 31.06, 32.01, 32.05, 32.06, 33.01, 33.06 and 35.01 (12m); and to create RL 30.02 (1m), (1n) and (10) (d), 31.001, 31.01 (3) (b), 31.02 (1) (b) 1m., (2) (am) and (3), 31.034, 31.035, 31.036, 34.001, 34.01 (1) (h) and (i), 34.04 (4), (5) and (6), 35.001, 35.01 (24) and (25), relating to credentialing requirements and procedures for private detective agencies, private detectives and private security persons.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 440.03 (1), Stats., and s. 440.26 (1) (b), (2) (c), (3m) and (6), Stats., as created by 1995 Wisconsin Act 461.

Statutes interpreted: s. 440.26, Stats.

This rule proposal contains many amendments which relate to the titles of the chapters of the current rules, the statutory authority for each chapter, and the form, style, placement, clarity, grammar, punctuation, and plain language of the current rules.

This rule proposal also incorporates changes that are required by the enactment of 1995 Wisconsin Act 461.

The following sections contain changes of a more substantive nature:

SECTIONS 8 and 9 amends the definition of "private security person" to exclude from the definition persons who provide crowd control services at events which include, but are not limited to, athletic events, concerts, fairs, festivals and trade shows, provide that 4 stated conditions are met. If the conditions are not met, such crowd control persons would be considered to be private security persons.

SECTIONS 10 to 19 amend, repeal and recreate certain provisions relating to the requirements, qualifications and procedures for licensing private detective agencies and private detectives. Some of these sections include provisions relating to the new authority and responsibility given to the department by 1995 Wisconsin Act 461, relating to the granting of permits to private security persons. SECTIONS 9 to 19 establish separate sections for each type of credential and each section contains the requirements, qualifications and procedures which apply to that credential. The only substantive changes that apply to private detectives and private detective agencies are those required by 1995 Wisconsin Act 461, such as the prohibition against licensing a person who has been convicted of a felony unless pardoned, and the requirement that applicants pay the department for the cost of record searches (as provided in 1995 Wisconsin Act 461). Other substantial changes include the elimination of the requirement that applications be notarized, the elimination of the requirement for an applicant to provide his or her employment record for the 10 years immediately preceding the date of application, the elimination of a requirement that fingerprints on fingerprint cards be taken by a law enforcement officer and the creation of a requirement that the department provide reasonable accommodations to applicants with disabilities who are otherwise qualified. The provisions relating to private security permits track the requirements in 1995 Wisconsin Act 461.

SECTIONS 21 to 24 make changes relating to the administration, the contents and the review procedures for the private detective licensing examination. Section RL 31.04 (2), relating to admission cards, is repealed, because no admission cards are needed for a person to schedule himself or herself to take the examination which is now administered by computer. The other provisions are modified to make them consistent with similar provisions in other rules of the department and boards in the department.

SECTION 25 eliminates the requirement that a private detective agency must obtain a separate license if it operates an office, branch, department or division under a name which is different from that of the principal office. The proposed rule simply requires the agency to inform the department of a new or additional name under which it will operate before the agency begins operating under that name.

SECTION 29 distinguishes between the requirements for a private detective and a private security person to notify the department about a transfer or termination of employment by a private detective agency. The new provisions pertaining to private security persons track the requirements in 1995 Wisconsin Act 461.

SECTIONS 20 and 35 clarify a policy, which is not very clearly stated in the current rules, that a private detective agency that permits an owner or employe to carry a firearm while on duty must obtain a comprehensive general liability policy with certain specific coverages.

SECTION 32 moves requirements for written contracts between private detective agencies and their clients from Chapter RL 35, relating to grounds for discipline, to Chapter RL 33, relating to practice requirements. This section also creates the following 3 exceptions to the general requirement: 1) in an emergency situation, 2) when providing services to an attorney, and

(3) when providing services to another licensed private detective agency. Chapter RL 35 would still contain a statement that it is unprofessional conduct to violate the requirements for a written contract as required in Chapter RL 33.

SECTION 34 permits a private detective agency to assign armed security personnel when the client and the agency agree in writing to do so, rather than, as in the current rule, when the client of the agency requests such assignments.

SECTION 36 clarifies a recent rule change by stating the conditions for carrying a loaded weapon in a vehicle. The current rule implies "loaded," but does not say "loaded."

SECTION 37 permits firearms proficiency certifiers to satisfy the annual 6-hour retraining requirement by conducting the 6-hour refresher course or the 36-hour course. They would not be required to take the 6-hour refresher course presented by another firearms proficiency certifier.

SECTION 39 creates provisions relating to denying approval of a firearms proficiency certifier and limiting, suspending or revoking the approval of a firearms proficiency certifier.

SECTIONS 43 and 47 use "credential" or "credential holder" in many of the provisions in that chapter when they apply to private detective agencies, private detectives and private security persons. The provision relating to conviction of a crime being a ground for discipline is modified to conform with 1995 Wisconsin Act 461.

TEXT OF RULE

SECTION 1. RL 30.01 is amended to read:

RL 30.01 AUTHORITY. The ~~provisions rules in chs. RL 30 to 35~~ this chapter are adopted pursuant to ss. 227.11 (2) and 440.26, Stats.

SECTION 2. RL 30.02 (1) is amended to read:

RL 30.02 (1) "Agency" or "private detective agency" means an individual, partnership, limited liability company, or corporation holding a private detective agency license issued by the department or having a right to renew a license issued by the department to act as or employ private detectives or private security persons.

SECTION 3. RL 30.02 (1m) and (1n) are created to read:

RL 30.02 (1m) "Client" means a person for whom a private detective agency agrees to provide private detective services, as described in sub. (12) (a), or to supply private security personnel.

(1n) "Credential" has the meaning in s. 440.01 (2) (a), Stats.

SECTION 4. RL 30.02 (7) (b) is amended to read:

RL 30.02 (7) (b) ~~Purports to be~~ Acts as a private detective or private security person.

SECTION 5. RL 30.02 (10) (d) is created to read:

RL 30.02 (10) (d) The owners of a limited liability company are the members.

SECTION 6. RL 30.02 (11), (12) (a) 1., 2. e. and (b) 2. are amended to read:

RL 30.02 (11) "Permit" means the private security permit described in s. 440.26 ~~(5)~~ (5m), Stats., or a firearms permit described in s. RL 34.015.

(12) (a) 1. A person who acts as, ~~uses the title~~ advertises or otherwise represents that the person is a private detective, private investigator or special investigator.

2. e. Securing evidence to be used before any court, public board, officer, or investigating committee.

(b) 2. A person exempt from the licensing requirement under s. 440.26 (5) ~~or (7)~~, Stats.

SECTION 7. RL 30.02 (12) (b) 3. is repealed.

SECTION 8. RL 30.02 (12) (b) 5. is amended to read:

RL 30.02 (12) (b) 5. Off-duty law enforcement officers when employed by a person or entity and when such employment has been officially authorized by the officer's law enforcement employment department or agency as an appropriate extension of the officer's function; provided that the law enforcement agency ~~clearly establishes with~~ gives the hiring person or entity ~~in writing, a written statement concerning~~ who is responsible or liable for the actions of the off-duty law enforcement officer while that person is performing services for the hiring person or entity.

SECTION 9. RL 30.02 (13) is repealed and recreated to read:

RL 30.02 (13) (a) "Private security person" means any private police, guard or any person who stands watch for security purposes. Except as provided in par. (b) 2., "private security person" includes a person employed by a private detective agency to act as an usher, a ticket-taker or an event attendant at events which include, but are not limited to, athletic events, concerts, fairs, festivals and trade shows.

(b) "Private security person" does not include any of the following:

1. An off-duty law enforcement officer when employed by a person or entity and when such employment has been officially authorized by the officer's law enforcement employment department or agency as an appropriate extension of the officer's function; provided that the law enforcement agency gives the hiring person or entity a written statement concerning who is responsible or liable for the actions of the off-duty law enforcement officer while that person is performing services for the hiring person or entity.

2. A person employed by a private detective agency who acts as an usher, ticket-taker or event attendant at events which include, but are not limited to, athletic events, concerts, fairs, festivals and trade shows, provided that all of the following conditions are met:

a. The person does not wear any clothing, badge, patch or lettering which identifies the person as one who provides a security function at the event or who refers to himself or herself by a title, such as a private security person, a private police officer or a private public safety person.

b. The person is not armed with a dangerous weapon.

SECTION 10. Chapter RL 31 (title) is amended to read:

Chapter RL 31 (title)

~~PRIVATE DETECTIVE AND AGENCY LICENSURE~~
CREDENTIALING REQUIREMENTS AND PROCEDURES
FOR PRIVATE DETECTIVE AGENCY, PRIVATE DETECTIVE
AND SECURITY PERSON

SECTION 11. RL 31.001 is created to read:

RL 31.001 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2) and 440.26 (2), (3), (4), (5m) and (5r), Stats.

SECTION 12. RL 31.01 (title) is amended to read:

RL 31.01 (title) CREDENTIAL REQUIRED.

SECTION 13. RL 31.01 (1) is repealed and recreated to read:

RL 31.01 (1) PRIVATE DETECTIVE AGENCY. (a) Except as provided in par. (c), a person shall obtain a private detective agency license before engaging in the following activities:

1. Advertising, soliciting or engaging in the business of a private detective agency.

2. Acting as a private detective, private investigator, investigator or private security person.

3. Acting as a supplier of private security personnel.

4. Soliciting business or performing any other type of service or investigation as a private detective or private security person.

5. Receiving any fees or compensation for acting as any person, engaging in any business or performing any service specified in subds. 1 to 4.

(b) A private detective agency license may be issued to an individual, a partnership, a limited liability company or a corporation.

(c) An individual who holds a license as a private detective or a permit as a private security person and who is employed by a licensed private detective agency is not required to obtain a private detective agency license before acting as a private detective or a private security person.

SECTION 14. RL 31.01 (3) is renumbered RL 31.01 (3) (a) and amended to read:

RL 31.01 (3) PRIVATE SECURITY PERMIT. (a) An employe of any licensed private detective agency doing business in this state as a supplier of uniformed private security persons to patrol exclusively on the private property of industrial plants, business establishments, schools, colleges, hospitals, sports stadiums, exhibits and similar activities is exempt from the license requirements under sub. (2), but shall obtain a private security permit as specified in s. 440.26 ~~(5)~~ (5m) or (5r), Stats.

SECTION 15. RL 31.01 (3) (b) is created to read:

RL 31.01 (3) (b) A licensed private detective may be employed as a private security person without obtaining a private security permit.

SECTION 16. RL 31.02 (1) (a), (b) (intro.) and 1. are amended to read:

RL 31.02 (1) (a) To obtain a license as a private detective agency, an individual applicant, all members of a partnership or a limited liability company, or all corporate officers shall be listed on the application. ~~One member shall sign the application and be designated as the principal. The application of a partnership or a limited liability company shall be executed by all members of the partnership or limited liability company. An application of a corporation shall be executed by the secretary and the president or the vice president and, in addition, in the case of a foreign corporation, by the registered agent.~~

(b) (intro.) A license may be granted under this section if the individual applicant, ~~all~~ or the members of a partnership or a limited liability company or all corporate officers who executed the application:

1. Subject to ss. 111.321, 111.322 and 111.335, Stats., do not have an arrest or conviction record involving a misdemeanor or a violation, as defined in s. 440.26 (4m), Stats.

SECTION 17. RL 31.02 (1) (b) 1m. is created to read:

RL 31.02 (1) (b) 1m. Have not been convicted in this state or elsewhere of a felony, unless pardoned.

SECTION 18. RL 31.02 (2) (a) is amended to read:

RL 31.02 (2) (a) Subject to ss. 111.321, 111.322 and 111.335, Stats., does not have an arrest or conviction record involving a misdemeanor or a violation, as defined in s. 440.26 (4m), Stats.

SECTION 19. RL 31.02 (2) (am) is created to read:

RL 31.02 (2) (am) Has not been convicted in this state or elsewhere of a felony, unless pardoned.

SECTION 20. RL 31.02 (3) is created to read:

RL 31.02 (3) PRIVATE SECURITY PERSON PERMIT. An applicant for a permit as a private security person may be granted a permit under s. 440.26, Stats., if the applicant:

(a) Subject to ss. 111.321, 111.322 and 111.335, Stats., does not have an arrest or conviction record involving a misdemeanor or a violation, as defined in s. 440.26 (4m), Stats.

(b) Has not been convicted in this state or elsewhere of a felony, unless pardoned.

(c) Is not a user of drugs or alcohol to an extent dangerous to the applicant or others or to an extent which would impair the applicant's ability to responsibly perform private security activities.

SECTION 21. RL 31.03 is repealed and recreated to read:

RL 31.03 APPLICATION PROCEDURE FOR PRIVATE DETECTIVE AGENCY LICENSES. (1) An applicant for a private detective agency license shall file with the department all of the following:

(a) A completed application on forms provided by the department.

(b) For each person who, pursuant to s. 440.26 (2) (b), Stats., executes the application, 2 complete and satisfactory sets of fingerprints on forms supplied by the department.

Note: Forms are available on request from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(c) One recent photograph of the applicant's head and shoulders only.

(d) A bond or liability policy, as required in s. 440.26 (4), Stats.

(e) The complete business location address of the applicant including the office or room number and street address. A post office box without a complete location address is inadequate.

(f) The fee specified in s. 440.05 (1), Stats.

(g) The costs incurred by the department in obtaining information related to the eligibility and qualifications of the applicant.

(2) For each person who, pursuant to s. 440.26 (2) (b), Stats., executes the application, information about whether the person is or has, within the 5 years preceding the date of application, been a user of drugs or alcohol to an extent dangerous to the person or other persons or to an extent which could impair the person's ability to perform private detective or private security activities responsibly.

(3) The department shall provide reasonable accommodations to applicants with disabilities who are otherwise qualified.

SECTION 22. RL 31.034, 31.035 and 31.036 are created to read:

RL 31.034 PRIVATE DETECTIVE AGENCY'S RESPONSIBILITY TO OBTAIN AND MAINTAIN A BOND OR LIABILITY POLICY. (1) A private detective agency shall obtain and maintain a surety bond or liability policy as required under s. 440.26 (4), Stats. If an agency obtains a comprehensive general liability policy, the policy shall include coverage for bodily injury liability, property damage and personal injury. In any case, if an agency permits an officer or employe to carry a firearm in the course of duty, the agency shall obtain a liability policy which shall include coverage for injury or damage resulting from the use of firearms. Evidence of a comprehensive general liability policy shall consist of a certificate of insurance stating the licensee as insured and the department as certificate holder.

(2) Each licensee shall maintain without lapse in coverage the bond or comprehensive general liability policy submitted to the department before the issuance of an original or renewal license.

(3) If a private detective agency obtains a comprehensive general liability policy, the policy shall cover all licensed private detectives and private security personnel employed by the agency.

(4) An individual licensed employe is not required to obtain a bond or liability policy if the employe is covered by the employing agency's liability policy.

RL 31.035 APPLICATION PROCEDURE FOR PRIVATE DETECTIVE LICENSES.

(1) An applicant for a private detective license shall file with the department all of the following:

(a) A completed application on forms provided by the department.

(b) Two complete and satisfactory sets of fingerprints on forms supplied by the department.

Note: Forms are available on request to the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(c) One recent photograph of the applicant's head and shoulders only.

(d) A \$2,000 surety bond, if the applicant's private detective agency employer has obtained a bond pursuant to s. 440.26 (4), Stats.

(e) A complete address of the applicant. A post office box without a complete location address is inadequate.

(f) The fee specified in s. 440.05 (1), Stats.

(g) The costs incurred by the department in obtaining information related to the eligibility and qualifications of the applicant.

(h) A statement signed by an authorized representative of a licensed private detective agency, showing that the applicant will be employed by the agency when acting as a private detective.

(2) An applicant who is or who has, within the 5 years preceding the date of application, been a user of drugs or alcohol to an extent dangerous to the person or other persons or to an extent which could impair the person's liability to perform private detective or private security activities responsibly shall provide the department all information necessary for the department to determine the applicant's fitness to practice.

(3) The department shall provide reasonable accommodations to applicants with disabilities who are otherwise qualified.

RL 31.036 APPLICATION PROCEDURE FOR PRIVATE SECURITY PERMITS.

(1) An applicant for a private security permit shall file with the department all of the following:

- (a) A completed application on forms provided by the department.
- (b) Two complete and satisfactory sets of fingerprints on forms supplied by the department.

Note: Forms are available on request to the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

- (c) One recent photograph of the applicant's head and shoulders only.
- (d) A complete address of the applicant. A post office box without a complete location address is inadequate.
- (e) The fee specified in s. 440.05 (1), Stats.
- (f) The costs incurred by the department in obtaining information related to the eligibility and qualifications of the applicant.
- (g) A statement signed by an authorized representative of a licensed private detective agency, showing that the applicant will be employed by the agency when acting as a private security person.

(2) An applicant who is or who has, within the 5 years preceding the date of application, been a user of drugs or alcohol to an extent dangerous to the person or other persons or to an extent which could impair the person's ability to perform private detective or private security activities responsibly shall provide the department all information necessary for the department to determine the applicant's fitness to practice.

(3) The department shall provide reasonable accommodations to applicants with disabilities who are otherwise qualified.

(4) The department shall issue a temporary private security permit pursuant to s. 440.26 (5r), Stats.

SECTION 23. RL 31.04 (2) is repealed.

SECTION 24. RL 31.04 (3) , (4) and (6) are repealed and recreated to read:

RL 31.04 (3) SUBJECTS TESTED. The examination shall test the applicant's knowledge or competence in those areas which the department, after consultation with subject matter experts, determines are appropriate for testing the applicant's knowledge for protection of public health and safety.

(4) DISHONEST ACT. An applicant may not engage in dishonest acts relating to the examination. The actions taken by the department when dishonest acts occur shall be related to the seriousness of the offense. These actions may include withholding the applicant's score, entering a failing grade for the applicant, and suspending the ability of the applicant to sit for an examination for a specific period of time after the examination in which the dishonest acts occurred.

(6) EXAMINATION REVIEW. (a) An applicant who fails the examination may request a review of that examination by filing a written request with the department within 30 days after the date on which examination results were mailed to the applicant.

(b) An examination review shall be conducted under the following conditions:

1. The time for review shall be limited to one hour.
2. The examination shall be reviewed only by the applicant and in the presence of a proctor.
3. The proctor may not respond to inquiries by the applicant regarding allegations of examination error.
4. Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing on the form provided for this purpose. The department shall review the comments or claims in consultation with a subject matter expert. The department shall notify the applicant in writing of the department's decision. If the decision does not result in a passing grade, the applicant may retake the examination or file a claim of examination error pursuant to sub. (7).
5. An applicant shall be permitted only one review of the failed examination each time it is taken and failed.

SECTION 25. RL 31.04 (7) (b) and (c) are repealed and recreated to read:

RL 31.04 (7) (b) The department shall review the request in consultation with a subject matter expert. The applicant shall be notified in writing of the department's decision.

(c) If the decision does not result in a passing grade, the applicant may retake the examination or request a hearing under s. RL 1.05.

SECTION 26. RL 31.04 (8) (title) and (8) are amended to read:

RL 31.04 (8) (title) EXAMINATION RETAKES. (a) There is no limit to the number of times ~~any~~ an applicant may take the examination.

(b) An applicant who ~~fails the examination under this section and who~~ reviews the examination ~~under~~ pursuant to sub. (6) may not retake ~~an~~ the examination within 30 days ~~from~~ after the date on which the examination ~~review~~ was reviewed.

(c) An applicant who ~~has passed~~ passes the examination and remains unlicensed for one year or more after the date of the examination shall again take and pass the examination before being licensed.

SECTION 27. RL 31.06 is repealed and recreated to read:

RL 31.06 ADDITIONAL LICENSING REQUIREMENTS. (1) In this section "trade name" means a name that is in addition to the name under which a person obtained a private detective agency license.

(2) A person who is licensed as a private detective agency shall, before doing business under any trade name, notify the department in writing of the trade name.

SECTION 28. RL 32.01 is repealed and recreated to read:

RL 32.01 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 440.05 (7), 440.11 and 440.26 (3), (4), (5), (5m) and (5r), Stats.

SECTION 29. RL 32.04 (title) and (1) are amended to read:

RL 32.04 (title) CHANGE OF NAME. ~~(1) An agency or a private detective~~ A credential holder shall notify the department in writing within 30 days after a change of name or address.

SECTION 30. RL 32.04 (2) is repealed.

SECTION 31. RL 32.05 and 32.06 are repealed and recreated to read:

RL 32.05 TRANSFER OF EMPLOYMENT. (1) PRIVATE DETECTIVES. A licensed private detective who wishes to transfer employment from one private detective agency to another shall submit to the department a transfer application accompanied by the fee specified in s. 440.05 (7), Stats. The licensed private detective may not conduct licensed activity for the new employer until that person has mailed or delivered the transfer application and required fee to the

department. Every licensed private detective shall notify the department of the name of the private detective's current employer or employers.

Note: Forms are available on request to the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) PRIVATE SECURITY PERSONS. A licensed private detective agency shall notify the department in writing within 5 days of any change in the information which the agency has provided the department pursuant to s. 440.26 (5), Stats.

RL 32.06 TERMINATION OF EMPLOYMENT. (1) PRIVATE DETECTIVES. A licensed private detective who terminates employment with an employing private detective agency shall send written notice to the department within 10 days after the termination.

(2) PRIVATE SECURITY PERSONS. A private detective agency shall notify the department in writing within 5 days after the termination of employment of a private security person.

SECTION 32. RL 32.07 (1) (b) and (2) are amended to read:

RL 32.07 (1) (b) The prospective new owner of a licensed agency shall apply for and receive an original agency license before engaging in business, ~~and shall attach to the license application a statement made under oath by the current owner certifying that the current owner will have no control of, or pecuniary interest in, the agency after the issuance of a license to the prospective new owner.~~

(2) If there is a change in any of the officers of a corporation or ~~partners members~~ of a partnership or a limited liability company, the agency shall notify the department of the change before new officers or partners take office. ~~Each officer~~ Officers or ~~partner members~~ of an agency shall ~~qualify under~~ comply with s. RL 31.02 (1) (b) ~~at all times~~. This subsection does not apply to a change of registered agent by a foreign corporation holding an agency license, but a copy of any statement required under s. ~~180.10~~ 180.1508, Stats., to be filed with the ~~secretary of state~~ department of financial institutions shall be filed with the department within 30 days after a change of registered agent.

SECTION 33. RL 33.01 is repealed and recreated to read:

RL 33.01 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2) and 440.26, Stats.

SECTION 34. RL 33.06 is repealed and recreated to read:

RL 33.06 CONTRACTS REQUIRED. (1) Except as provided in sub. (2), a private detective agency shall enter into a written agreement with a client before providing services to the client. The agreement shall contain at least the following provisions:

- (a) The date of the agreement.
- (b) The parties to the agreement.
- (c) A description of the services to be provided by the agency.
- (d) A description of the fees required by the agency for the services to be provided.
- (e) A description of how or when the agreement will terminate or may be terminated by one or both parties.

(2) A private detective agency is not required to enter into a written agreement in any of the following circumstances:

- (a) In an emergency situation when the services of the private detective agency are required and there is no time to enter into a written contract before conducting the services.
- (b) When providing services to an attorney.
- (c) When providing services to another licensed private detective agency.

SECTION 35. RL 34.001 is created to read:

RL 34.001 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2) and 440.26 (3m) and (5r), Stats.

SECTION 36. RL 34.01 (1) (b) and (d) are amended to read:

RL 34.01 (1) (b) The client ~~of and~~ the agency ~~requests agree~~ in writing that the agency will assign armed security personnel to it the client ~~and the agency retains these requests and makes copies of them available to the department upon request by the department.~~

(d) The owner or employe is not prohibited from possessing a firearm under s. 941.29, Stats., or any federal law.

SECTION 37. RL 34.01 (1) (h) and (i) are created to read:

RL 34.01 (1) (h) The owner or employe does not hold a temporary private security permit issued under s. 440.26 (5r), Stats.

(i) The agency has obtained a comprehensive general liability policy pursuant to s. RL 31.034.

SECTION 38. RL 34.011 (title) and (intro.) are amended to read:

RL 34.011 (title) CONDITIONS RELATING TO TRANSPORTING A LOADED FIREARM IN A VEHICLE. (intro.) No owner or employe of an agency may transport a loaded firearm in a vehicle, unless all of the following apply:

SECTION 39. RL 34.02 (3) is amended to read:

RL 34.02 (3) A certificate of proficiency shall be valid for one year. An owner or employe shall obtain a new certificate of proficiency by satisfying the requirements in subs. (1) and (2), except that the training course shall consist of a 6-hour refresher course which more briefly covers the required course contents described in s. RL 34.03. A person approved as a firearms proficiency certifier under s. RL 34.04 may satisfy the 6-hour training requirement by conducting the 6-hour refresher course or the 36-hour course under s. RL 34.03 (1).

SECTION 40. RL 34.04 (3) is repealed.

SECTION 41. RL 34.04 (4), (5) and (6) are created to read:

RL 34.04 (4) The department may deny an application submitted to it pursuant to sub. (1) or may suspend, limit or revoke a permit which it has granted, if the department determines that the conditions and requirements described in sub. (2) have not been satisfied or do not continue to be satisfied. The department shall grant a hearing pursuant to ch. RL 1 or 2.

(5) An applicant shall submit to the department 2 complete and satisfactory sets of fingerprints to carry a firearm and the department may obtain a criminal history record search from the Wisconsin department of justice and the federal bureau of investigation relating to the applicant before initially granting a permit for that individual and every 2 years thereafter.

(6) The applicant shall pay the reasonable costs incurred by the department in obtaining information relating to the eligibility and qualifications of the applicant, including the reasonable costs of criminal history record searches.

SECTION 42. RL 34.08 is amended to read:

RL 34.08 REPLICA OF A FIREARM. No owner or employe of an agency may, at any time while he or she is on duty, carry on, about or near the person an object which looks like a firearm, but is not.

SECTION 43. Chapter RL 35 (title) is amended to read:

Chapter RL 35 (title)

GROUNDS FOR DISCIPLINE AGAINST A PRIVATE DETECTIVE,
AND A PRIVATE SECURITY PERSON OR A PRIVATE DETECTIVE AGENCY
GROUNDS FOR DISCIPLINARY ACTION

SECTION 44. RL 35.001 is created to read:

RL 35.001 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2) and 440.26 (2), (4m), (5m), (6) and (8), Stats.

SECTION 45. RL 35.01 (intro.), (1), (2), (3) and (10) are amended to read:

RL 35.01 UNPROFESSIONAL CONDUCT. (intro.) The department may deny an application for renewal, limit, suspend or revoke a licensee credential, or reprimand a licensee credential holder upon proof that the licensee credential holder or any owner of an agency has engaged in conduct reflecting adversely on professional qualification. Conduct reflecting adversely on professional qualification includes, but is not limited to, any of the following:

(1) Performing private detective or private security related services while the ability of the licensee credential holder to competently perform duties is impaired by mental or emotional disorder or alcohol or other drug abuse.

(2) Violating, or aiding or abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person. A licensee credential holder who has been convicted of a felony, misdemeanor or ordinance violation, ~~including driving while intoxicated under s. 346.63, Stats., but excluding other motor vehicle offenses under chs. 341 to 349, Stats., as defined in s. 440.26 (4m), Stats.,~~ shall send to the department within ~~30 days~~ 48 hours after the judgment of conviction or the judgment finding that the person committed the violation, a copy of the complaint or other information which describes the nature of the crime or conviction and the judgment of conviction in order that the department may determine whether ~~the circumstances of the crime of which the licensee was convicted are substantially related to the practice of a private detective or private security person,~~ disciplinatory action must or should be taken against the credential holder.

(3) Operating a ~~branch, divisional or department office~~ under a ~~different name than that of the agency's principal office in this state, unless the branch, division or department has received a separate license~~ is different than a name that the credential holder has provided to the department on an application for a credential or in other written form pursuant to s. RL 31.06.

(10) Employing any person who engages in any act or course of conduct for which the department may discipline a ~~private detective or agency~~ credential holder, if the employer knows or should know that the person is engaging or has engaged in the act or course of conduct.

SECTION 46. RL 35.01 (12m) is repealed and recreated to read:

RL 35.01 (12m) Violating the requirements for written contracts in s. RL 33.07.

SECTION 47. RL 35.01 (13), (17), (19), (22) and (23) are amended to read:

RL 35.01 (13) Assigning any person to perform private detective or security personnel duties who has not been issued a license or permit prior to performing the services or who has not properly notified the department of an employment transfer pursuant to s. RL 32.05.

(17) Providing false information in the application for a ~~license~~ credential.

(19) Practicing without a current ~~license~~ credential.

(22) Having disciplinary action through final board or agency action taken against one's ~~license~~ credential in another jurisdiction.

(23) After a request by the department, failing to cooperate in a timely manner with the department's investigation of a complaint filed against the ~~licensee~~ credential holder. There is a rebuttable presumption that a ~~licensee~~ credential holder who takes longer than 30 days to respond to a request of the department has not acted in a timely manner.

SECTION 48. RL 35.01 (24) and (25) are created to read:

RL 35.01 (24) Providing private detective services to a client in any situation where the exercise of the private detective's independent professional judgment on behalf of a client will be or is likely to be adversely affected.

(25) Providing services to 2 clients when the provision of services to one client directly and adversely affects the interests of the other client without the knowledge and written consent of the clients.

SECTION 49. RL 35.03 (2) is amended to read:

RL 35.03 (2) A ~~private detective~~ credential holder employed by an agency whose agency license is suspended, revoked or not renewed by the department may ~~apply for a transfer of license~~ employment to another agency, provided that the private detective or private security person was not a party to the act or course of conduct which caused the suspension, revocation or nonrenewal of the agency license of the former employer.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on July 1, 1997 or on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats., if the latter date is later than July 1, 1997.

Dated _____

Agency _____

Marlene A. Cummings, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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7/28/97

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 97-048

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Section RL 31.03 (1) (g) makes reference to the costs incurred by the department for conducting record searches. The language is overbroad. See s. 440.26 (3), Stats. See also ss. RL 31.035 (1) (g) and 31.036 (1) (f).

2. Form, Style and Placement in Administrative Code

a. Section RL 30.02 (11) revises the definition of "permit" to include two types of permits. Has the department searched chs. RL 30 to 35 for use of the term "permit" to ensure that the revised definition is appropriate for all uses of the term?

b. SECTION 10 should create s. RL 31.001, rather than s. RL 31.055. In this regard, see also SECTIONS 34 and 43.

c. Section RL 31.034 restates, with modest revisions, current s. RL 33.01. It would be easier for the reader to determine what changes are made to current rules by renumbering and amending existing rules rather than repealing and recreating them. This comment applies to several provisions of the rule that essentially create or recreate existing rules.

d. The first sentence of s. RL 31.034 (1) should read: "A private detective agency shall obtain and maintain a surety bond or liability policy as required under s. 440.26 (4), Stats." The statutory reference in the following sentence can then be deleted.

- e. In s. RL 31.034 (2), "shall maintain" should be substituted for "shall be responsible for maintaining."
- f. Subsection (3) of s. RL 31.035 appears to apply only to the application procedure for private detective licenses. Is it intended that this reasonable accommodation provision have broader applicability?
- g. It appears that s. RL 31.06 (2) should be placed elsewhere; for example, s. RL 31.01 (3).
- h. Section RL 32.05 (1) appears to refer to a form. See s. 1.09 (2), Manual, for requirements regarding forms.
- i. A more descriptive title to s. RL 32.06 (2) would be "PRIVATE SECURITY PERSONS."
- j. In s. RL 32.07 (2), it is suggested that the second sentence be deleted as unnecessary. If retained, the meaning of the reference to complying with s. RL 31.02 (1) should be clarified.
- k. SECTIONS 32 and 33 can be combined into a repeal and recreation.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. There appears to be nothing in the rule requiring an applicant for a private security permit to provide evidence satisfactory to the department that the applicant is an employe of a private detective agency described in s. 440.26 (5) (c). See s. 440.26 (5m) (a) 3., Stats.
- b. Section RL 31.03 (1) (b) and other provisions of the rule require the filing of fingerprints ". . . taken by a person who has provided evidence satisfactory to the department that the person is competent in taking fingerprints and trustworthy." It is not clear how the person will demonstrate this to the department. Are persons who taken fingerprints certified by a public or private organization?
- c. Section RL 31.03 (1) (c) should clarify to what "person's" refers.
- d. The rule does not address temporary private security permits under s. 440.26 (5r), Stats. Is that intended?
- e. In the last sentence of s. RL 31.04 (4), should "dishonest act" replace "unauthorized assistance" for consistency with the previous two sentences?
- f. Is the relationship of s. RL 31.04 (6) (b) 4. and sub. (7) clear?
- g. The relationship of ss. RL 32.04 and 31.06 should be reviewed and clarified.
- h. The last sentence of s. RL 32.05 (1) appears to be in need of clarification. Is the requirement intended only to apply when there is a transfer of employment? If there has been no transfer of employment, does the department have record of the private detective's employer based on the license application information?

i. Section RL 35.01 (2) assumes that the department has authority to determine whether disciplinary action should be taken against a credential holder after conviction of a felony. Unpardoned felons are not eligible for credentials under s. 440.26, Stats.