

Clearinghouse Rule 14-014

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal: SPS 34.01 (1) (f) and (fm), 34.02 (2) (Note); renumber SPS 34.01 (1) (g) to (i) as 34.01 (1) (f) to (h), 34.06 and 34.07 as 34.11 and 34.12; renumber and amend: SPS 34.015 (6) as 34.015 (5), 34.02 (2) , (2) (a) and (b) as 34.02 (2) (a) and (b) 1. and 2.; 34.05 as 34.10, 34.08 as 34.13; amend: SPS 34.01 (1) (intro.), 34.01 (1) (g), (2) and (3), 34.011 (intro.), 34.015 (title) and (1), 34.015 (2), 34.02 (1) (Note), 34.02 (3), 34.03 (title) and (1), 34.04 (2) (a) 2. and 3., 34.04 (4) to (6), (6) (Note) and (7); and create: SPS 34.002, 34.01 (5) to (9), 34.015 (1) (Note), 35.04 (1) (Note), 34.04 (7) (Note) and 34.10 (1) (Note) , relating to firearms and other dangerous weapons for private security personnel, private detectives, and private investigators or special investigators.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 440.26 (3m), and 440.26 (5r), Stats.

Statutory authority: s. 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats., confers to the agency the powers to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces.

Related statute or rule: Chs. SPS 30 to 35 and Jus 17 and 18, and s. 175.60, Stats.

Plain language analysis:

Within the 2011 Wisconsin Act 35 and the authority given to the Department of Safety and Professional Services, this legislation relates to owners or employees of private security agencies and the carrying of dangerous weapons about or near their person when holding a firearms permit granted by the department or a permit issued under s. 175.60, Stats.

The proposed rule is primarily expected to exempt all of the requirements in ch. SPS 34 from applying to anyone who is licensed in Wisconsin to carry a concealed weapon in accordance with a permit issued under s. 175.60, Stats. In addition, the proposed rule provides for the recognition of permits to carry firearms, concealed or otherwise, issued by other states. These proposed rules are intended to respond to the legislative directives set forth in 2011 Act 35 and to be consistent with Wisconsin's 'concealed carry law'.

Specific revisions contained in 2011 Act 35 would allow a licensee under s. 175.60, Stats., to carry a weapon, concealed or otherwise, in the capacity of an owner or employee of a security agency under chs. SPS 30 to 35. These proposed provisions would now recognize all the following: a licensee, as defined in s. 175.60 (1) (d), Stats., an out-of-state licensee, as defined in s. 175.60 (1) (g) , Stats., an individual employed in this state by a public agency as a law enforcement officer, to whom s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies, a qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), Stats., or a former officer, as defined in s. 941.23 (1) (c), Stats.

In addition, a number of Notes are being updated to reflect the most current information; several formatting and typographical corrections are also being made.

SECTION 1. Definitions not included in ch. SPS 30 are created in s. SPS 34.002 adding three terms defined in state statutes specific to carrying firearms: carry, dangerous weapon and weapon.

SECTIONS 2, 4, 8, 9, 12, 13 to 22 and 24. These treatment sections are: rewritten for clarification purposes or adding current information in Notes, adding Notes either where needed, correcting typographical errors, or repealing Notes no longer pertinent.

SECTION 3. Two items from a listing specifying the carrying of a weapon when licensed are repealed in 2011 Act 35—the requirement to be in uniform or on duty.

SECTIONS 5 and 6. A typographical error is corrected in addition to expanding the exceptions for carrying a concealed weapon, thus reflecting provisions in 2011 Act 35, specifically: a licensee, as defined in s. 175.60 (1) (d), Stats., an out-of-state licensee, as defined in s. 175.60 (1) (g) , Stats., an individual employed in this state by a public agency as a law enforcement officer, to whom s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies. , a qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), Stats., or a former officer, as defined in s. 941.23 (1) (c), Stats. Also a new section is created in SPS 34.01 to recognize the individuals allowed to carry a concealed weapon as in the listing above.

SECTION 7. This section recognizes the individuals listed above and the provisions regarding a firearm being transported in a vehicle, concealed or “within plain view”.

SECTION 23. Various sections are renumbered to reflect that the provisions do not relate to obtaining or the granting of a permit.

SECTION 25. This treatment section is the effective date of the rule once adopted.

Summary of, and comparison with, existing or proposed federal regulation:

The minimum requirements for carrying a weapon as stated in s. 440.26 (3m), Stats., references U.S. Code 15 USC 5902 (b) [Title 15-Commerce and Trade Chapter 85-Armored Car Industry Reciprocity]. This federal rule relates to state reciprocity of weapons licenses issued to armored car company crew members. This specific federal rule is cited in 2011 Act 35 whereby rules of the department concerning the carrying of dangerous weapons shall meet the minimum requirements specified in this U.S. Code. When comparing ch. SPS 34, this rule at least meets the minimum standards of the cited U.S. Code.

No other federal rule or code was found specific to this Wisconsin law.

Comparison with rules in adjacent states: An Internet-based search was conducted of the rules and laws of the four adjacent states relating to provisions contained in 2011 Act 35.

Illinois: In Illinois within the Division of Professional Regulation, there is a licensing program for security and investigator, structured under a sole proprietorship, partnership, or corporation. The license is for two-years and renewal requires a re-qualifying test; the private detective licensure examination of which the passing grade is good for six years. In addition to various application, examination and training fees, fingerprints and background checks are required. When licensed, one may carry a firearm after 20 hours of basic training and 40 hours of field training. [Illinois Code: 225 ILCS 446/] To date, Illinois does not issue licenses for the carrying of concealed weapons.

Iowa: In Iowa, a license is required for Private Investigators and Security Agents. The license is good for two years; there is no examination at application although continuing education is required. The license is attached to the agency; when working for more than one agency, a separate card is required. To carry a weapon while working, one must meet the requirements in Iowa administrative code 661 chapter 4 and 80A. Iowa Code s. 724.7(1) provides that a concealed carry permit or license issued by another state to a nonresident of Iowa shall be considered a valid permit or license to carry weapons under Iowa law. Iowa Code s. 724.11-A; therefore, Iowa too recognizes reciprocity.

Michigan: In Michigan, licenses are regulated by the Michigan Professional Investigator Licensure Act, chapter 338. There are minimum age requirements (25 years old),

education (at least a GED or equivalent), and a clear criminal record required for obtaining a license to carry a weapon. There are no exams or continuing education required. The license is valid for three years and cards/certificates are given to individuals and the sole proprietor, partners or corporate members. Photos and criminal history are required, but not fingerprints. Michigan provides by statute that any person who meets specified eligibility and training requirements and who files a proper application shall be issued a license to carry a concealed pistol. [Mich. Comp. Laws § 28.425b(7)].

Minnesota: In Minnesota, there is a private detective board, which oversees the requirements for private detectives and protective agents. In this state, an applicant must be at least 18 years old and free of felony convictions in addition to being employed by a protective/security capacity. Under Minnesota statutes ch. 3326, one must be trained in the proper use of the weapon, including 12 hours of on-the-job training and 6 hours of continuing education. Minnesota Administrative Rules 7506.0100 – 7506.2900 contain licensing and continuing education qualifications as well as minimum standards of training instructors. Minn. statutes s. 624.714, provides for requirements to issue a permit to carry a concealed pistol.

Summary of factual data and analytical methodologies:

The methodology used in creating these rules was to compare the provisions of 2011 Act 35 and chs. Jus 16 and 17, relating to the provisions of obtaining firearms and weapons permits granted by the department, for private security and provide for the recognition of .all of the following: a licensee, as defined in s. 175.60 (1) (d), Stats., an out-of-state licensee, as defined in s. 175.60 (1) (g) , Stats., an individual employed in this state by a public agency as a law enforcement officer, to whom s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies, a qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), Stats., or a former officer, as defined in s. 941.23 (1) (c), Stats.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

Pursuant to s. 227.137, Stats., the department will notice for a 14-day period the proposed rule to gather input on the effect on small business.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Jean MacCubbin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-266-0955; or telecommunications relay at 711; email at jean.maccubbin@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Jean MacCubbin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to jean.maccubbin@wisconsin.gov. Comments must be received on or before the public hearing to be held March 12, 2014 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 34.002 is created to read:

SPS 34.002 Definitions. In addition to definitions under SPS 30.02, in this chapter:

(1) "Carry" has the meaning given in s. 175.60 (1) (ag), Stats.

Note: Section 175.60 (1) (ag), Stats., reads: "'Carry' means to go armed with.'

(2) "Dangerous weapon" has the meaning given under s. 939.22 (10), Stats.

Note: Section 939.22 (10), Stats., reads: "'Dangerous weapon' means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood; any electric weapon, as defined in s. 941.295 (4) (1c) (a); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.'

(3) "Weapon" has the meaning given in s. 175.60 (1) (j), Stats.

Note: Section 175.060 (1) (j), Stats., reads: "Weapon" means a handgun, an electric weapon, as defined in s. 941.295 (1c) (a), a knife other than a switchblade knife under s. 941.24, or a billy club.'

SECTION 2. SPS 34.01 (1) (intro.) is amended to read:

SPS 34.01 General conditions relating to carrying a firearm. (1) No owner or employee of an agency may carry on, about or near their person any firearm unless all of the following ~~apply~~ conditions are met:

SECTION 3. SPS 34.01 (1) (f) and (fm) are repealed.

SECTION 4. SPS 34.01 (1) (g) to (i) are renumbered as SPS 34.01 (1) (f) to (h).

SECTION 5. SPS 34.01 (1) (g), (2) and (3) are amended to read:

SPS 34.01 (1) (g) The owner or employee does not hold a ~~temporarily~~ temporary private security permit issued under s. 440.26 (5r), Stats.

(2) Except as provided in ~~sub. (4)~~ subs. (4) to (9), an employee of any agency may not carry on, about or near the person any concealed firearm at a time when he or she is on duty.

(3) Except as provided in ~~sub. (4)~~ subs. (4) to (9), a private detective, ~~while in uniform and on duty as a private security person~~, may only carry on, about or near his or her person a firearm when all the conditions in sub. (1) are satisfied. This subsection does not prohibit a private detective from having on, about or near his or her person a firearm which the private detective obtained and is holding as evidence in an investigation.

SECTION 6. SPS 34.01 (5) to (9) are created to read:

SPS 34.01 (5) A person who holds a permit issued under s.175.60, Stats., may carry on, about or near his or her person a firearm, concealed or otherwise, when acting as a private detective or private security person, without first obtaining a firearms permit granted by the department.

(6) A person who is employed in this state by a public agency as a law enforcement officer to carry a concealed firearm and if s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3., Stats., applies, may carry on, about or near his or her person a firearm, concealed or otherwise, when acting as a private detective or private security person, without first obtaining a firearms permit granted by the department.

(7) A person who is a qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), to carry a concealed firearm and if s. 941.23 (2) (b) 1. to 3., Stats., applies, may carry on, about or near his or her person a firearm, concealed or otherwise, when acting as a private detective or private security person, without first obtaining a firearms permit granted by the department.

(8) A person who is a former officer, as defined in s. 941.23 (1) (c), Stats., to carry a concealed firearm and if s. 941.23, Stats., applies, may carry on, about or near his or her person a firearm, concealed or otherwise, when acting as a private detective or private security person, without first obtaining a firearms permit granted by the department.

(9) A person who is a licensee, as defined in s. 175.60 (1) (d), Stats., or an out-of-state licensee, as defined in s. 175.60 (1) (g) , Stats., to carry a concealed weapon as permitted under s. 175.60, Stats., may carry on, about or near his or her person a firearm, concealed or otherwise, when acting as a private detective or private security person, without first obtaining a firearms permit granted by the department.

SECTION 7. SPS 34.011 (intro.) is amended to read:

SPS 34.011 Conditions relating to transporting a loaded firearm in a vehicle. ~~No~~ Except for a person as provided in ss. SPS 34.01 (4) to (9), no owner or employee of an agency may transport a loaded firearm in a vehicle, unless all of the following—apply conditions are met:

SECTION 8. SPS 34.015 (title) and (1) are amended to read:

SPS 34.015 ~~Permit granted by the department~~ Application for a permit to carry a firearm. (1) ~~An~~ As provided in ch. SPS 31, an agency shall apply to the department for a permit to authorize any of its owners or employees to carry a firearm when assigned to do so by the agency.

SECTION 9. SPS 34.015 (1) (Note) is created to read:

SPS 34.015 (1) Note: For a copy of Form# 2156, Procedures For Certification Of Proficiency To Carry A Firearm, contact the department at phone: (608) 266-1212 or download the form from the department's webpage at <http://dsps.wi.gov/Licenses-Permits/FirearmsPermit/FIREPforms>.

SECTION 10. SPS 34.015 (2) is amended to read:

SPS 34.015 (2) The department may grant a permit to an agency pursuant to sub. (1) if the department has determined that all of the conditions and requirements in ss. SPS

34.01, 34.02, 34.03 and ~~34.05~~ 34.10 have been satisfied by the agency and the owner or employee who will be assigned by the agency to carry a firearm while on duty.

SECTION 11. SPS 34.015 (6) is renumbered and as renumbered SPS 34.015 (5) is amended to read:

SPS 34.015 (5) The agency shall pay the reasonable costs incurred by the department in obtaining information relating to the eligibility and qualifications of each owner or employee to whom the permit applies, including the reasonable costs of criminal history record searches and if submitted under ch. SPS 31, may include costs of finger printing and a NICS search.

SECTION 12. SPS 34.02 (1) (Note) is amended to read:

SPS 34.02 (1) Note: ~~A~~ For a copy of Form #467, Firearms Certification of Proficiency-Initial Certification, may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935 or accessible for download from the department's webpage: <http://dsps.wi.gov>.

SECTION 13. SPS 34.02 (2), (2) (a) and (b) are renumbered as SPS 34.02 (2) (a) and (b) 1. and 2. and as renumbered are amended to read:

(2) (a) Certification shall be received from a person who is approved as a firearms proficiency certifier by the department under s. SPS 34.04. +

(b) The certificate shall be notarized and shall include at least:

~~(a)~~ **1.** A full and complete description of each type of firearm, the care, handling and use of which the owner or employee is proficient with.

~~(b)~~ **2.** Statements to the effect that the owner or employee has successfully completed the training required in s. SPS 34.03. These statements shall include the date, time of day, the number of hours and the location where the owner or employee completed the training.

SECTION 14. SPS 34.02 (2) Note is repealed.

SECTION 15. SPS 34.02 (3) is amended to read:

SPS 34.02 (3) A certificate of proficiency shall be valid for one year. An owner or employee shall ~~obtain a new~~ renew their 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. SPS 34.03 (1). A person approved as a firearms proficiency certifier under s. SPS 34.04 may satisfy the 6-hour training requirement by conducting the 6-hour refresher course or the 36-hour course under s. SPS 34.03 (1).

SECTION 16. SPS 34.03 (title), (1) (intro.) and Note are amended to read:

SPS 34.03 ~~Training~~ Initial training requirements for carrying a firearm. (1)
GENERAL REQUIREMENT. Except as provided in sub. (2), completion of a training program of not less than 36 hours consisting of the following is required as a prerequisite for obtaining an initial certificate of proficiency to carry a firearm under s. SPS 34.02. The training program shall ~~consist of~~ include all of the following:

Note: ~~A copy of the~~ The firearms training guide entitled "~~Demonstrate Care and Use of Firearms~~" as approved by the Wisconsin Law Enforcement Standards Board is available for inspection at the Division of Professional Credential Processing, 1400 East Washington Avenue, Madison, WI or accessible for download from the department of justice webpage: <http://doj.wi.gov/>.

SECTION 17. SPS 34.04 (1) (Note) is created to read:

SPS 34.04 (1) Note: Form #1912, Application For Approval of Firearms Proficiency Certifier, may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935 or accessible for download from the department's webpage: <http://dps.wi.gov/Licenses-Permits/FirearmsCertifier/FIRECforms>.

SECTION 18. SPS 34.04 (2) (a) 2. and 3. are amended to read:

SPS 34.04 (2) (a) 2. Current certification as a law enforcement firearms instructor by the national rifle association of america, inc.

3. At any time on or after January 1, 1995, was approved as a firearms instructor by ~~the training and standards board in~~ the Wisconsin law enforcement standards board, or certified as a law enforcement firearms instructor, or a substantially equivalent designation, by the national rifle association of america, inc. and has completed a 6-hour firearms instructor refresher course within 12 months before application for approval by the department. The refresher course shall be presented by a regional training school approved by the Wisconsin law enforcement standards board or by a staff instructor in the law enforcement activities division of the national rifle association.

SECTION 19. SPS 34.04 (4) to (6), (6) (Note), and (7) are amended to read:

SPS 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~~ an approval granted

under this section, 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. SPS 1 or 2.

(5) Except as provided in sub. (1m), an applicant shall submit to the department ~~two~~ complete and satisfactory sets of fingerprints as specified under s. SPS 31.03 (1) (b), in order 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.

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

Note: ~~The Form #1912, Application For Approval of Firearms Proficiency Certifier, Form #1912,~~ may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935 or accessible for download from the department's webpage: <http://dsps.wi.gov/Licenses-Permits/FirearmsCertifier/FIRECforms>.

(7) The approval of a firearms proficiency certifier shall expire on December 31 of each even-numbered year, unless the firearms proficiency certifier submits to the department an application for renewal on a form prescribed by the department and is reapproved by the department.

SECTION 20. SPS 34.04 (7) Note: is created to read:

SPS 34.04 (7) Note: Form #2117, Firearms Certification of Proficiency-Renewal Certification, may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935 or accessible for download from the department's webpage: <http://dsps.wi.gov>.

SECTION 21. SPS 34.05 is renumbered SPS 34.10 and as renumbered is amended to read:

SPS 34.10 Agency firearms policy and laws. (1) Each agency shall file with the department a copy of its firearms policy before any of its owners or employees may receive a permit ~~from~~ granted by the department pursuant to s. SPS 34.015 and thereafter within 30 days after any substantial changes to ~~it~~ its firearms policy.

(2) Each agency shall maintain a current copy of ss. 939.48 and 939.49, Stats., relating to the use of force, and shall make these documents accessible to its owners and employees.

SECTION 22. SPS 34.10 (1) Note is created to read:

SPS 34.10 (1) Note: Mail copies of an agency's firearms policy to the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935.

SECTION 23. SPS 34.06 and 34.07 are renumbered SPS 34.11 and 34.12.

SECTION 24. SPS 34.08 is renumbered SPS 34.13 as renumbered is amended to read:

SPS 34.13 Replica or facsimile of a firearm. No owner or employee of an agency may, at any time while he or she is on duty, carry on, about or near the person, concealed or otherwise, an object which looks like a firearm, but is not.

SECTION 25. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Dave Ross, Secretary
Department of Safety and
Professional Services