

CR 14-014
Professional Services, Chs. SPS 1-299

STATE OF WISCONSIN
Department of Safety and Professional Services

IN THE MATTER OF RULEMAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE 14-014)

ORDER

An order of the Department of Safety and Professional Services to repeal SPS 34.01 (1) (f) and (fm) and (4) and 34.02 (2) (b) (Note); to renumber and amend SPS 34.02 (2) (intro.), (a), and (b) and 34.08; to amend SPS 34.01 (1) (intro.) and (h), (2), and (3); 34.011 (intro.); 34.015 (title), (1), (2), and (6); 34.02 (1) (Note) and (3); 34.03 (title) and (1) (intro.) and (b) (Note); 34.04 (2) (a) 2. and 3., (4) to (6), (6) (Note), and (7); and 34.05; and to create SPS 34.002, 34.01 (5) to (8), 34.015 (1) (Note), 34.04 (1) (Note) and (7) (Note), and 34.05 (1) (Note), relating to firearms and other dangerous weapons for private security personnel, private detectives, and private investigators or special investigators.

ANALYSIS

Statutes interpreted: sections 440.26 (3m) and 440.26 (5r).

Statutory authority: sections 227.11 (2) (a) and 440.06 (3m).

Explanation of agency authority:

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

Section 440.26 (3m) of the Statutes requires the agency to promulgate rules relating to the carrying of dangerous weapons by private detectives, investigators, and security personnel.

Related statute or rule:

Section 175.60 of the Statutes and chapters SPS 30 to 35 and Jus 16 and 17.

Plain language analysis:

Under 2011 Wisconsin Act 35 and the authority given to the Department of Safety and Professional Services, these rule revisions relate 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 license issued under section 175.60 of the Statutes.

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

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

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

SECTION 1. Definitions not included in s. SPS 30.02 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, 8, 9, 11, and 12 to 22. 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. Some are renumbering within to clarify requirements.

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

SECTIONS 4. and 5. A typographical error is corrected. In addition, text is created expanding the exceptions for carrying a concealed weapon, and enumerating the provisions in 2011 Act 35. More 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. Stats., 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.

SECTION 6. This treatment section recognizes the individuals listed above and the provisions regarding a firearm being transported in a vehicle, concealed or "within plain view."

SECTION 10. This treatment section is amended to clarify that the costs of background checks and fingerprinting are the responsibility of the applicant.

SECTION 23. 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 section 440.26 (3m) of the Statutes 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. Rules of the Department concerning the carrying of dangerous weapons shall meet the minimum requirements specified in this U.S. Code. When comparing chapter 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 these rule revisions.

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

Illinois: In Illinois within the Division of Professional Regulation, there is a licensing program for security and investigators, structured under a sole proprietorship, partnership, or corporation. Current Illinois law allows the standards for registration, licensure, and professional conduct of private detectives and private security personnel to be regulated by rule [225 ILCS 447/50-20.]. Additionally, Illinois law allows the issuance of a license to carry a concealed firearm, which was approved in July 2013. [430 ILCS 66/10; P.A. 98-63.]

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 s. 661-91.4 Iowa Code 80A. Iowa codes recognize reciprocity. For an Iowa concealed carry permit to be issued to a nonresident, s. 724.11A Iowa Code provides that a concealed carry permit or license issued by another state shall be considered a valid permit or license to carry weapons under Iowa law.

Michigan: In Michigan, licenses are regulated by the Michigan Professional Investigator Licensure Act, ss. 338.821 to 338.851. Michigan laws ss. 338.1051 to 338.1092, the Michigan Private Security Business and Security Alarm Act, establishes minimum qualifications for the licensing of individuals to carry pistols and weapons while engaged in security guard and police activities. The state police administer the licensure of private security police and private college security forces. In the case of providing security for an employer's property, no license is required, although the employer retains custody of the pistol except while on duty. 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, unless Federal requirements prohibit such. [Mich. Comp. Laws § 28.426].

Minnesota: In Minnesota, there is a private detective and protective agent services board, which oversees the requirements for private detectives and protective agents. Licensees may then at any time in the performance of their duties wear, carry, possess, or have access to a weapon. Minnesota provides that an applicant must be at least 18 years old and free of felony convictions in addition to being employed in a protective/security capacity. This license is valid for two years. Under Minnesota statutes sections 326.32 to 326.339, 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. Minnesota statutes section 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 chapters 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 section 175.60 (1) (d) of the Statutes an out-of-state licensee, as defined in section 175.60 (1) (g) of the Statutes an individual employed in this state by a public agency as a law enforcement officer, to whom sections 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. of the Statutes apply, a qualified out-of-state law enforcement officer, as defined in section 941.23 (1) (g) of the Statutes, or a former officer, as defined in section 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 section 227.137 of the Statutes the Department announced a 14-day period for the 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 rules do not have an economic impact on small businesses, as defined in section 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:

Sam Rockweiler, Rules Coordinator, at the 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 at telephone (608) 266-0797; or by e-mail at sam.rockweiler@wi.gov; or by telecommunications relay services at 711.

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 in 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; 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 175.60 (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 (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) and (4) are repealed.

SECTION 4. SPS 34.01 (1) (h), (2), and (3) are amended to read:

SPS 34.01 (1) (h) 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. (5) to (8)~~, an owner or 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. (5) to (8)~~, 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~~ that the private detective obtained and is holding as evidence in an investigation.

SECTION 5. SPS 34.01 (5) to (8) are created to read:

SPS 34.01 (5) 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.

(6) A person who is a qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), Stats., 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.

(7) 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 (2) (c), 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 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 6. SPS 34.011 (intro.) is amended to read:

SPS 34.011 Conditions relating to transporting a loaded firearm in a vehicle. ~~No~~ Except as provided in s. 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 7. SPS 34.015 (title) and (1) are amended to read:

SPS 34.015 (title) ~~Permit granted by the department~~ Application for a permit to carry a firearm. (1) An agency who applies for a license or permit under ch. SPS 31 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 8. 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 9. 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 10. SPS 34.015 (6) is amended to read:

SPS 34.015 (6) 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 with a license or permit application under ch. SPS 31, shall include costs of finger printing and a U.S. FBI-national instant criminal background check system (NICS) search.

SECTION 11. 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~~ contact 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 download the form from the department's webpage: <http://dsps.wi.gov>.

SECTION 12. SPS 34.02 (2) (intro.), (a), and (b) are renumbered SPS 34.02 (2) (a) and (b) (intro.), 1., and 2. and, as renumbered, are amended to read:

SPS 34.02 (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:

1. A full and complete description of each type of firearm, the care, handling and use of which the owner or employee is proficient.

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 13. SPS 34.02 (2) (b) (Note) is repealed.

SECTION 14. 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 a 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 15. SPS 34.03 (title) and (1) (intro.) and (b) (Note) are amended to read:

SPS 34.03 (title) ~~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:

(b) ~~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 download the guide from the department of justice webpage: <http://doj.wi.gov/>.

SECTION 16. 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 download from the department's webpage: <http://dsps.wi.gov/Licenses-Permits/FirearmsCertifier/FIRECforms>.

SECTION 17. 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 18. 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 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 19. 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 downloaded from the department's webpage: <http://dsps.wi.gov>.

SECTION 20. SPS 34.05 is amended to read:

SPS 34.05 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 21. SPS 34.05 (1) (Note) is created to read:

SPS 34.05 (1) Note: For filing of an agency's firearms policy, mail the 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 22. SPS 34.08 is amended to read:

SPS 34.08 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~~ that looks like a firearm, but is not.

SECTION 23. EFFECTIVE DATE. 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

File reference: Done Codes/SPS 34.04/Adoption order