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CERTIFICATE

STATE OF WISCONSIN)
)
DEPARTMENT OF REGULATION AND LICENSING) SS

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, William Dusso, Administrator of the Division of Administrative Services in the Wisconsin Department of Regulation and Licensing and custodian of the official records of the Division do hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on August 31, 1988.

I further certify that said copy has been compared to me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin, this 31st day of August, A.D. 1988.



William Dusso
Administrator
Division of Administrative Services
Department of Regulation & Licensing

WLD
RULES-18

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

Revisor of Statutes
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IN THE MATTER OF RULEMAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE DEPARTMENT	:	DEPARTMENT OF REGULATION
OF REGULATION AND LICENSING	:	AND LICENSING ADOPTING RULES
	:	Clearinghouse Rule 88-6

PROPOSED ORDER

The Department of Regulation and Licensing adopts an order to repeal ch. RL 3; and to create chs. RL 30 to 35, relating to the licensing and regulation of private detectives and private detective agencies.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutory authority: ss. 15.08(5)(b), 227.11(2)(a), 440.26(2)(c), Stats.
Statute interpreted: s. 440.26, Stats.

In this order the Department of Regulation and Licensing proposes to repeal ch. RL 3 and to create new rules under chs. RL 30 to 35 regulating private detectives and private detective agencies. The following is a summary of the proposed rules:

1. Section RL 30.02 significantly expands the definition in the current chapter RL 3, Wis. Adm. Code, and provides definitions for many essential terms used in the new rules.
2. Section RL 31.01 identifies who is required to obtain a private detective agency license, a private detective license or a private security permit, pursuant to s. 440.26, Stats.
3. Section RL 31.02 states the qualifications for obtaining a private detective agency license and a private detective license. All individuals obtaining licenses or associated with entities obtaining licenses must not be users of drugs or alcohol to a dangerous extent and may not have an arrest or conviction record subject to ss. 111.321, 111.322 and 111.335, Stats. In addition, individuals must pass an examination administered by the department.
4. Section RL 31.03 states the procedure for and contents of applications for private detective agencies and private detective licenses. A notarized application, including two sets of fingerprints, a color photograph, and the applicant's employment record during the previous 10 years, is required.

14. Section RL 34.01 states the conditions under which private detectives and employes of private detective agencies may carry firearms. There must be a real need for them to carry firearms in order to carry out their duties and they must file a certification form with the department to show that they have been properly trained. The rule states that licensees and employes of private detective agencies may not carry concealed firearms unless the person is a peace officer and other conditions are met.
15. Section RL 34.02 describes the training requirements for carrying a firearm. The training program shall consist of no fewer than 32 hours of training and education relating to the legal use and care of a firearm while on duty.
16. Section RL 34.03 states the requirement for employes of private detective agencies to file a certificate of proficiency before carrying a firearm. The marksmanship requirements which must be attained under the direction of a qualified firearms proficiency certifier are made equivalent to those which pertain to police officers certified by the Wisconsin Department of Justice. A certificate of proficiency in the care, handling and use of a firearm must be filed with the department for each employe of a private detective agency who carries a firearm.
17. Section RL 34.04 describes the qualification standards for firearms proficiency certifiers.
18. Section RL 34.05 requires private detective agencies to file a copy of their firearms policies with the department upon initial licensure and within 30 days after any substantial changes to it. They must also maintain current copies of statutes and rules relating to the use of firearms.
19. Section RL 34.06 requires a private detective agency or its employe to report to the department when there has been an accidental or intentional discharge of any firearm while on duty. This reporting requirement is similar to that of most law enforcement agencies pertaining to the discharge of a firearm by any of their sworn officers.
20. Section RL 34.07 requires that private detective agencies properly train their employes in the use of any other dangerous weapons which the agencies provide to their employes while on duty.
21. Section RL 35.01 enumerates multiple grounds for which a private detective agency or any of its licensed employes may be disciplined subsequent to proper notice and hearing.
22. Section RL 35.02 states that a private detective agency may be disciplined for violations committed by any of its licensed employes.
23. Section RL 35.03 describes the effect which a suspension, revocation or nonrenewal of a private detective agency license has on agency employes. In such cases a private detective may transfer to the employment of another agency, provided that the private detective was not a party to the violation with which the agency is charged.

TEXT OF RULE

SECTION 1. Ch. RL 3 is repealed.

SECTION 2. Chs. RL 30 to 35 are created to read:

Chapter RL 30

PRIVATE DETECTIVE AND AGENCY
AUTHORITY AND DEFINITIONS

RL 30.01 AUTHORITY. The provisions in chs. RL 30 to RL 35 are adopted pursuant to ss. 227.11 and 440.26, Stats.

RL 30.02 DEFINITIONS. In chs. RL 30 to 35:

(1) "Agency" or "private detective agency" means an individual, partnership, 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.

(2) "Department" means the department of regulation and licensing.

Note: The department office is located at Room 281, 1400 East Washington Avenue, Madison, Wisconsin 53702, telephone (608) 266-0829.

(3) "Employee" means any person who receives earnings as payment for personal services rendered for the benefit of an employer. A person who is listed on an employer's payroll records and for whom federal and state payroll deductions are taken and payroll taxes paid is presumed to be an employee. However, a person is not an employee unless the employer has a right to control and direct the employee who performs the services as to the result to be accomplished by the services and as to the details and means by which the result is to be accomplished.

(4) "Firearm" means a weapon from which a shot is discharged by gunpowder, including but not limited to handguns and shotguns.

(5) "License" means a license issued by the department to a private detective agency or to a private detective under s. 440.26, Stats.

(6) "Officer" means the president, vice-president, secretary or treasurer of a corporation.

(7) "On duty" means that time during which a private detective or private security person:

(a) Receives or is entitled to receive fees or other compensation for his or her services as a private detective or a private security person; or

(b) Purports to be a private detective or private security person.

(8) "Original agency license" means:

(a) A license issued to an agency which does not hold an agency license at the time it makes application and which is not eligible to renew a license; or

(b) A license issued to an agency which has applied for a license under s. RL 32.07 after undergoing a change of controlling ownership.

(9) "Original private detective license" means a license issued to a person who does not hold a private detective license at the time the person makes application and who is not eligible to renew the license without examination.

(10) "Owner" means the owner of an agency. For the purpose of chs. RL 30 to 35:

(a) The owner of a sole proprietorship is the license holder.

(b) The owners of a corporation are the officers of the corporation.

(c) The owners of a partnership are the partners.

(11) "Permit" means the private security permit described in s. 440.26(5), Stats.

(12) (a) "Private detective" means any of the following:

1. A person who acts as, uses the title or otherwise represents himself or herself to be a private detective, private investigator or special investigator.

2. A person engaged for compensation or other consideration on behalf of another, in investigating or otherwise obtaining or furnishing information relating to any of the following:

a. Crimes or wrongs done or threatened against the United States, any state or territory, or any political subdivision thereof.

b. The identity, conduct, business, honesty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any person, if such information is obtained in secret, without the knowledge of the person being observed.

c. The location, disposition or recovery of lost or stolen property.

d. The cause or responsibility for fires, libels, losses, accidents, damage, injury or death.

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

3. A person who acts as a private security person and does not wear a uniform, including one who provides personal protection of individuals from bodily harm or death.

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

1. A public officer or employe while performing his or her official duty.

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

3. Employes of commercial establishments who operate exclusively on their premises or persons employed by an attorney or firm of attorneys, but does include a person who works for more than one law firm.

4. An individual, the members of a partnership and the officers of a corporation having a private detective agency license who are not engaged in the work of a private detective.

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 the hiring person or entity in writing, 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.

6. Persons licensed by this state for activities other than those under s. 440.26, Stats., when performing acts within the scope of their license.

7. Persons directly employed by an insurer and persons working as insurance adjusters under contract with an insurer.

8. Persons employed to act as shoppers in business establishments and report on the efficiency of employes, the quality of services or the condition of the premises.

Note: Persons engaged in posing as patrons for the purpose of checking honesty of employes and then reporting to the employer are required to be licensed.

9. Persons contracted as consultants to a private detective or private detective agency and who performs no investigatory work of any kind themselves.

10. Scientific researchers, laboratory personnel and expert consultants who may provide testimony to any court, board, officer or investigating committee.

(13) "Private security person" means a uniformed employe of a licensed agency who stands watch, patrols or responds to security systems for security purposes and who has obtained a permit under s. 440.26(5), Stats. "Private security person" does not include 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 the hiring person or entity in writing, 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.

(14) "Uniform" means any clothing, badge, patch or lettering which clearly identifies to the public a person being a security guard.

Chapter RL 31

PRIVATE DETECTIVE AND AGENCY LICENSURE
REQUIREMENTS AND PROCEDURES

RL 31.01 LICENSE REQUIRED. (1) PRIVATE DETECTIVE AGENCY LICENSE.

(a) A private detective agency license is required for the operation of a private detective agency including:

1. Acting as a private detective, private investigator, special investigator or private security person;
2. Supplying of such personnel under subdivision 1; or
3. Advertising or solicitation of business in the operation of a private detective agency.

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

(2) PRIVATE DETECTIVE LICENSE. (a) A private detective license is required to engage in the services of a private detective.

(b) A private detective may only provide private detective services on behalf of a private detective agency in the capacity of an employe and not as an independent contractor, unless the private detective has a private detective agency license.

(3) PRIVATE SECURITY PERMIT. 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), Stats.

RL 31.02 QUALIFICATIONS. (1) PRIVATE DETECTIVE AGENCY LICENSE. (a) To obtain a license as a private detective agency, an individual applicant, all members of a partnership or all corporate officers shall be listed on the application. One member shall sign the application and be designated as the principal.

(b) A license may be granted under this section if the individual applicant, all members of a partnership or all corporate officers:

1. Subject to ss. 111.321, 111.322 and 111.335, Stats., do not have an arrest or conviction record.
2. Are not users of drugs or alcohol to an extent dangerous to themselves or to other persons or to an extent which could impair his or her ability to direct or perform private detective or private security activities responsibly.

(2) PRIVATE DETECTIVE LICENSE. An applicant for licensure as a private detective may be granted a license 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.

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

(c) Has passed the examination administered by the department as set forth in s. RL 31.04.

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

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

Note: Information about application deadlines is available from the bureau of direct licensing and real estate in the department at Room 281, 1400 East Washington Avenue, Madison, Wisconsin 53702, telephone (608) 266-0829.

(b) Two complete and satisfactory sets of fingerprints on forms supplied by the department. The fingerprints shall be taken by any federal, state, county or municipal law enforcement officer and the forms shall be signed by the officer and stamped with his or her official stamp.

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

(d) The applicant's employment record for the 10 years immediately preceding the date of application, listing the type of employment and the name and address of each employer.

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

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

(2) Any change of name or address from that on the original application shall be reported to the department on a change form within 30 days of change.

(3) An applicant who has a pending criminal charge or has been convicted of any crime or ordinance violation shall provide the department all related information necessary for the department to determine whether the circumstances of the arrest or conviction substantially relate to the circumstances of the licensed activity.

(4) An applicant who is or has been a user of drugs or alcohol to an extent dangerous to himself or herself or other persons or to an extent which could impair the applicant'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.

RL. 31.04 EXAMINATION FOR PRIVATE DETECTIVE LICENSURE. (1)

ADMINISTRATION. At least once every month the department shall administer or cause to be administered an examination for the licensure of private detectives.

(2) ADMISSION CARD. At least 10 days prior to the examination, the department shall mail an admission card to the applicant, who shall present the card at the door of the examination room with identification as specified on the admission card.

(3) SUBJECTS TESTED. The examination shall test the applicant's knowledge or competence in all of the following areas:

(a) Wisconsin statutes and administrative rules governing private detective agencies and private detectives.

(b) Conduct reflecting on professional qualification.

(c) Criminal law and procedure.

(d) Open record laws.

(e) Legal limitations on a private detective's ability to make arrests and conduct searches and seizures.

(f) Surveillance.

(g) Preserving and maintaining evidence for possible use in court.

(h) Notetaking and report writing.

(i) Serving legal documents.

(j) Testifying on deposition and in court, and

(k) Limits on the use of excessive force.

(4) UNAUTHORIZED ASSISTANCE. An applicant who gives or receives unauthorized assistance during the examination may have his or her score withheld by the department. Future consideration of such applicant shall be at the discretion of the department.

(5) PASSING SCORE. The score required to pass the examination shall be based on the department's determination of the level of examination performance required for minimal acceptable competence in the profession. The passing score shall be established prior to the exam administration and shall be designated by a grade of 70.

(6) EXAMINATION REVIEW. (1) An applicant who fails the examination may request a review of that examination. The applicant must file a written request to the department within 30 days of the date on which examination results were mailed.

(2) The time for review shall be limited to one hour.

(3) The examination shall be reviewed only by the applicant and in the presence of a proctor.

(4) The proctor shall not respond to inquiries by the applicant regarding allegations of examination error.

(5) Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing on the provided form. These comments shall be retained and made available to the applicant for use at a subsequent hearing.

(6) An applicant shall be permitted to review the examination only once.

(7) CLAIM OF EXAMINATION ERROR. (1) An applicant wishing to claim examination error must file a written request for department review in the department office within 30 days of the date the examination was reviewed. The request shall include:

(a) The applicant's name and address;

(b) The type of license applied for;

(c) A description of the perceived error; including specific questions or procedures claimed to be in error; and

(d) The facts which the applicant intends to prove, including reference text citations or other supporting evidence for the applicant's claim.

(2) The department shall review the claim and notify the applicant in writing of the department's decision and any resulting grade changes.

(3) If the decision does not result in the applicant passing the examination, the applicant may request a hearing under RL 1.05.

(8) REEXAMINATION. (a) There is no limit to the number of times any applicant may take the examination.

(b) An applicant who fails the examination under this section and who reviews his or her examination under sub. (6) may not retake an examination within 30 days from the examination review.

(c) An applicant who has passed 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.

RL 31.05 DENIAL OF LICENSE. A license under this chapter may be denied for fraud or misrepresentation in the application for a license, or for any of the grounds under s. RL 35.01 for which the department may discipline a licensee.

RL 31.06 ADDITIONAL LICENSING REQUIREMENTS. (1) BRANCH OFFICES. An agency shall operate all offices, branch offices, divisions and departments under the same name as the principal office, unless these offices are separately licensed.

(2) PRIVATE DETECTIVE AS PRIVATE SECURITY PERSON. A licensed private detective may be employed as a private security person without obtaining a permit.

Chapter RL 32

PRIVATE DETECTIVE AND AGENCY LICENSE
RENEWAL AND REPORTING REQUIREMENTS

RL 32.01 CURRENT LICENSURE REQUIRED FOR PRACTICE. (1) PRIVATE DETECTIVE AGENCY. No person may operate or attempt to operate as a private detective agency, nor use the title or anything else to indicate the operation of a private detective agency unless such operation is licensed as a private detective agency under s. 440.26, Stats., and holds current licensure as set forth in the provisions for biennial renewal under s. RL 32.02 or 32.03.

(2) PRIVATE DETECTIVE. No person may practice or attempt to practice as a private detective, nor use the title or anything else to represent himself or herself as a private detective unless he or she is licensed as a private detective under s. 440.26, Stats., and holds a current license as set forth in the provisions for biennial renewal under s. RL 32.02 or 32.03

RL 32.02 BIENNIAL RENEWAL DURING ESTABLISHED RENEWAL PERIOD. (1) The department shall mail an application for renewal of license on or before August 1 of even-numbered years to every private detective agency and private detective holding current licensure. Applicants desiring to renew their licenses shall file with the department the completed application and fee specified in s. 440.05(1), Stats.

(2) The expiration date of the license of a private detective agency and a private detective is August 31 of even-numbered years. The department shall assess a penalty fee, as specified in s. 440.05(4) or (5), Stats., if the returning renewal application with fee is not received by the department by August 31 of every even-numbered year.

RL 32.03 BIENNIAL RENEWAL OUTSIDE OF ESTABLISHED RENEWAL PERIOD. Private detective agencies and private detectives may renew their licenses outside of the renewal periods set forth in s. RL 32.02 by making application for renewal, paying the renewal fee specified in s. 440.05(3), Stats., and the penalty for late renewal specified in s. 440.05(4) or (5), Stats. This may not be construed to authorize practice contrary to the requirements of s. RL 32.01.

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

(2) An agency which changes its name without undergoing a change of ownership shall notify the department within 30 days of the change and shall have the name on the certificate of insurance or the agency bond changed before doing business under the new name.

RL 32.05 TRANSFER OF EMPLOYMENT. 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 his or her 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.

RL 32.06 TERMINATION OF EMPLOYMENT. 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.

RL 32.07 CHANGE OF OWNERS OR OFFICERS. (1) CHANGE OF OWNERS. (a) If an agency undergoes a change of owner, the former owner shall surrender the agency license to the department within 30 days after receiving written notice from the department of the issuance of a license to the new owner.

(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) CHANGE OF OFFICERS OR PARTNERS. If there is a change in any of the officers of a corporation or partners of a partnership, the agency shall notify the department of the change before new officers or partners take office. Each officer or partner of an agency shall qualify under s. RL 31.02(1) 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, Stats. to be filed with the secretary of state shall be filed with the department within 30 days after a change of registered agent.

RL 32.08 TERMINATION OF PRIVATE DETECTIVE AGENCY BUSINESS. An agency which terminates its business shall notify and surrender the agency license to the department within 30 days after termination.

Chapter RL 33

PRIVATE DETECTIVE AND AGENCY PRACTICE REQUIREMENTS

RL 33.01 LICENSEE'S RESPONSIBILITY TO OBTAIN AND MAINTAIN BOND OR LIABILITY POLICY. (1) Licensees are responsible for obtaining and maintaining a bond or liability policy. The comprehensive general liability policy required by s. 440.26(4), Stats., shall include coverage for bodily injury liability, property damage and personal injury. The policy shall also include coverage for injury or damage resulting from the use of firearms if an agency permits anyone associated with it to carry a firearm in the course of duty. 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 be responsible for maintaining 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.

Note: This provision clarifies that an individual licensed employe is not required to obtain a bond or liability policy if he or she is covered by the employing agency's liability policy.

RL 33.02 PRIVATE SECURITY PERSONS TO WEAR UNIFORMS. A private security person holding a permit shall wear a uniform while on duty. A person may perform security guard services as a private security person without wearing a uniform only if the person is licensed as a private detective or is exempt by law from the requirement for a license or permit.

RL 33.03 IDENTIFICATION TAGS. A private detective agency shall furnish all employes acting as private security personnel with an identification or name tag which shall at a minimum contain the person's name, number or other information which clearly identifies the person and the agency, or the person and the entity contracting with the agency. A private detective agency shall ensure that all employes who act as private security personnel wear identification or name tags which are visible to the public at all times and comply with this rule.

RL 33.04 AGENCY PHOTO IDENTIFICATION. A licensed private detective agency shall furnish all employes acting as private detectives with an identification which shall contain at a minimum a current full face, head and shoulders color photograph of the person, his or her name and the name and address of the agency.

RL 33.05 BADGES, SHIELDS AND STARS PROHIBITED. Licensees may not wear, use or display any badge, shield or star in the course of acting as a private detective.

RL 33.06 AVOIDING CONFLICTS OF INTEREST IN EMPLOYMENT. (1) A private detective shall not provide private detective services to a client in any situation where the exercise of the private detective's independent professional judgment in behalf of a client will be or is likely to be adversely affected.

(2) A private detective agency may not provide services to two 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.

Chapter RL 34

FIREARMS AND OTHER DANGEROUS WEAPONS

RL 34.01 CONDITIONS RELATING TO CARRYING A FIREARM. (1) No licensee, private security person, principal or employe of an agency may carry on, about or near his or her person any firearm while on duty, unless:

(a) The circumstances or conditions of the licensee's, private security person's, principal's or employe's assignment give rise to a substantial need for being armed; and,

(b) The client for whom an employee is assigned requests in writing that the agency assign armed personnel to it and the agency retains these requests and makes copies of them available to the department upon request by the department; and

(c) The licensee, private security person, principal or employe carrying the firearm is currently certified under s. RL 34.03 as being proficient in the care, handling and use of the type of firearm being carried on, about, or near the person.

(2) No licensee, private security person, principal or employe of any agency shall carry on, about or near the person any concealed firearm at a time when he or she is on duty unless:

(a) The person is a peace officer as defined in s. 939.22(22), Stats.; and,

(b) The circumstances or conditions of his or her work give rise to a substantial need for his or her being so armed; and

(c) He or she is certified under s. RL 34.03 as being proficient in the care, handling and use of such weapon.

RL 34.02 TRAINING REQUIREMENTS FOR CARRYING A FIREARM. (1) Completion of a training program of not less than 32 hours consisting of the following is required as a prerequisite for obtaining an initial certificate of proficiency to carry a firearm under s. RL 34.03.

(a) Instruction in the dangers of and misuse of the firearm, safety rules, and care and cleaning of the firearm;

(b) Proficiency in the firing of firearms as required by the Wisconsin law enforcement firearms manual. Proficiency means obtaining a minimum marksmanship standard as stated in A Training Guide For Law Enforcement Officers;

Note: See RL 34.03(c) for obtaining a copy of the training guide referred to in this provision.

(c) Instruction in the legal use of firearms under the provisions of the Wisconsin criminal code and relevant court decisions;

(d) A presentation stressing the ethical and moral considerations which should be taken into account by any person who uses a firearm;

(e) A review of the current law regarding lawful detentions; and

(f) A review of the current law on criminal and civil liability for intentional and negligent acts.

(2) This subsection does not apply to licensees or private security persons who have been certified prior to the effective date of this rule.

RL 34.03 CERTIFICATES OF PROFICIENCY TO CARRY A FIREARM. (1) Before a principal or employe receives an assignment which includes carrying a firearm, the principal or employe shall obtain a certificate of proficiency in the care, handling and use of that specific type of firearm. Certificates of proficiency under this section shall be renewed annually as set forth in sub. (2). For the purpose of this subsection the principal or employe shall obtain a separate certification of proficiency for each firearm with different barrel lengths but not for different firearm makes or models.

(2) Certification may be made by a person who qualifies as a firearms proficiency certifier under s. RL 34.04. The certificate shall be notarized, and shall include, at least:

(a) A full and complete description of each type of firearm, the care, handling and use of which the principal or employe is proficient;

(b) Statements to the effect that the principal or employe understands safety rules, range rules, and the procedures for the care and cleaning of each type of firearm with which he or she is proficient and that he or she understands the legal limits on the use of unreasonable or deadly force. These statements shall include the date, time of day and the number of hours the principal or employe completed the training as described in s. RL 34.02.

(c) In the case of a firearm, proof that the principal or employe has met the minimum marksmanship standards for each type of firearm with which he or she is proficient as set forth in the current edition of A Training Guide For Law Enforcement Officers.

Note: The training guide is published by the Training and Standards Bureau, Division of Law Enforcement Services, Wisconsin Department of Justice, 123 West Washington Avenue, Madison, Wisconsin 53702. This standard, which is hereby incorporated by reference, is available at the address above.

(d) Any principal or employe of an agency shall file a certificate under this subsection with the department before carrying a firearm while on duty and on the annual anniversary date of the first filing.

RL 34.04 QUALIFICATION AS A FIREARMS PROFICIENCY CERTIFIER. A firearms proficiency certifier shall have training in the legal limits on the use of unreasonable or deadly force. A firearms proficiency certifier shall have proof of meeting one of the following other qualifications:

(1) An instructor's certificate in the police firearm instructor's program or security firearm instructor's program issued by the national rifle association;

(2) An instructor approved as a firearms instructor by the training and standards bureau in the Wisconsin department of justice; or

(3) Other firearm instructor education or experience that the department considers to be substantially equivalent to sub. (1) or (2).

RL 34.05 AGENCY FIREARMS POLICY AND LAWS. (1) Each agency shall file a copy of its firearms policy upon initial licensure and thereafter within 30 days after any substantial changes to it.

(2) Each agency shall maintain a current copy of the statutes and rules relating to the use of firearms, and shall make these accessible to its employees.

RL 34.06 REPORTING THE DISCHARGE OF A FIREARM. If any principal or employe of an agency is responsible for the accidental or intentional discharge of any firearm other than in target practice, competition, or licensed hunting, or the accidental or intentional use of deadly force by any means, the principal or employe shall within 24 hours after the incident notify the local law enforcement agency where the incident took place and inform his or her supervisor of the incident. The supervisor or another person assigned by the agency shall investigate the incident as soon as possible, and shall make a signed, written report of the incident, identifying all persons involved in the incident, the investigator, and the agency, and fully describing the circumstances of the incident. As soon as possible after the investigation is completed, a copy of the report shall be filed with the department and with the local law enforcement agency.

RL 34.07 OTHER DANGEROUS WEAPONS. A licensee, private security person, principal or employe of an agency who is armed with any other dangerous weapon may use only a weapon for which he or she is proficient in handling based on training and experience, and for which he or she understands the legal limits of force and the dangers and misuse of and safety rules of the weapon. The agency shall, upon request of the department, provide documentation of the training or experience which prepared him or her to be proficient in the use of the weapon.

Chapter RL 35

PRIVATE DETECTIVE AND PRIVATE DETECTIVE AGENCY
GROUNDS FOR DISCIPLINARY ACTION

RL 35.01 UNPROFESSIONAL CONDUCT. The department may deny an application for renewal, limit, suspend or revoke a license, or reprimand a licensee upon proof that the licensee 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 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 who has been convicted of a felony, misdemeanor or ordinance violation except motor vehicle offenses under chs. 341 to 349, Stats., shall send to the department within 30 days after the judgment of conviction a copy of the complaint or other information which describes the nature of the crime 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, pursuant to s. 111.335(1)(c), Stats.

(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.

(4) Wearing, using or displaying a badge, shield or star in the course of acting as a private detective.

(5) Pretending to be a law enforcement agency or peace officer including but not limited to:

(a) Operating a motor vehicle with flashing red or blue lights contrary to s. 347.25, Stats.

(b) Using the term "police department" in connection with advertising, badge, emblem, stationery, or vehicle.

(c) Intentionally wearing uniforms to closely resemble in style, color, accessories or insignia the uniforms of a police agency in whose jurisdiction the licensee conducts business.

(6) Using false, misleading or deceptive advertising.

(7) Advising any person to engage in an illegal act or course of conduct.

(8) Violating state or federal law rules or regulations related to the care, handling or use of firearms or other dangerous weapons.

(9) Violating any rule in chs. RL 30 to 35.

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

(11) Failing to maintain a bond or liability policy for the period of licensure as required by s. 440.26, Stats.

(12) Neglecting, failing or refusing to render professional services to any person solely because of that person's age, race, color, handicap, sex, sexual orientation, religion, creed, national origin or ancestry.

(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.

(14) Failing to provide clients with an accurate written account of services within a reasonable period of time after having been requested to do so by the client.

(15) Issuing checks on business or trust accounts which contain insufficient funds.

(16) Employing a person under the age of 18 years to act as a private detective or private security person.

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

(18) Providing false information to the department or its agent.

(19) Practicing without a current license.

(20) Obtaining or attempting to obtain anything of value from a client without the client's consent.

(21) Obtaining or attempting to obtain any compensation from a client by fraud, misrepresentation, deceit or duress.

(22) Having disciplinary action through final board or agency action taken against one's license 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. There is a rebuttable presumption that a licensee who takes longer than 30 days to respond to a request of the department has not acted in a timely manner.

RL 35.02 DISCIPLINE AGAINST AGENCY FOR PRIVATE DETECTIVE VIOLATIONS.

The department may take disciplinary action against a licensed private detective agency for violations of chs. RL 30 to 35 committed by licensed private detectives or security persons employed by the agency.

RL 35.03 EFFECT OF SUSPENSIONS, REVOCATION OR NON-RENEWAL OF AGENCY LICENSE ON AGENCY EMPLOYEES. (1) Suspension, revocation or nonrenewal of an agency license shall terminate private detective or private security personnel activity by all employees of the agency.

(2) A private detective employed by an agency whose agency license is suspended, revoked or not renewed by the department may apply for a transfer of his or her license to another agency, provided that the private detective 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.

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.

Dated 8/31/88 Agency Marlene R. Amey
Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

There is no statewide or local fiscal effect.

REGULATORY FLEXIBILITY ANALYSIS

The proposed rules were reviewed by the Department of Regulation and Licensing's Business Review Advisory Committee. While the committee raised a concern about reporting requirements for agencies and individuals, the proposed rules actually reduce the reporting and paperwork from the current rules. For example, the proposed rules eliminate the need to transfer a private detective license upon a change in employment. Further, the agency name is not required to be on a private detective license. A private detective need only notify the department of each current employer so that the statutory requirement for bonding can be monitored.

Also eliminated are the requirements for filing a photograph upon renewal of a license, and for turning in a private detective license to the department upon termination of employment.

JH/WLD
RULES-68
8/31/88