

ORDER OF THE WISCONSIN DEPARTMENT OF JUSTICE

AN ORDER to *amend* Jus 10.11 (1); and to *create*
Jus 10.01 (4m) and 10.095, relating to firearms restriction records searches

Analysis Prepared by the Wisconsin Department of Justice

Statutes Interpreted

Section 175.35 (1) (at), (2g) (c), (2g) (d), and (2i), Stats.

Statutory Authority

Sections 175.35 (2g) (c), (2g) (d) and 227.11, Stats.

Explanation of Statutory Authority to Promulgate the Rule

Jus 10 contains the current rule provisions promulgated by the Wisconsin Department of Justice for statutorily-required records searches that are performed by the department before the completion of proposed firearms sales. Section 175.35 (2i), Stats. prescribes the fee for such searches. Section 227.11, Stats. confers general rule-making authority upon state agencies. Section 175.35 (2g)(c), Stats. directs the department to promulgate rules for firearms restriction record searches. Section 175.35 (2g)(d), Stats. directs the department to promulgate rules to convey relevant firearms restriction information that is received from circuit courts under chs. 51, 54, and 55, Stats. in a timely manner to the national instant criminal background check system, 28 CFR Part 25. The system contains a national database of information concerning persons who have been prohibited from possessing firearms.

Related Statutes or Rules

There are no related statutes or rules that are relevant to the limited scope of this rule, other than those listed above.

Plain Language Analysis

The primary objective of the rule is to update Jus 10 to conform to existing requirements in s. 175.35 (2g) (d) and 175.35 (2i), Stats. The rule will also conform the fee provisions in Jus 10.11 (1) to the fee provisions in s. 175.35 (2i), Stats.

Comparison with Federal Regulations

A new provision, Jus. 10.095, facilitates the operation of the national instant criminal background check system, 28 CFR Part 25.

Comparison with Rules in Adjacent States

There are no known comparable rules in Illinois, Iowa, Michigan, or Minnesota.

Summary of Factual Data and Analytical Methodologies

There is no factual data available. No methodologies were used.

Analysis and Supporting Documents Used to Determine Effect on Small Business

The Legislature prescribes the fee that the department collects from firearms dealers. Section 175.35 (2i), Stats. Firearms dealers may collect the fee from the transferee. Jus 10.11 (1). This rule does not impose any separate or additional fee upon firearms dealers and therefore does not have any economic effect on small business. No supporting documents were used to perform this analysis.

Effect on Small Business

There are no provisions in this rule that have any significant effect on small business.

Fiscal Estimate

State fiscal effect

The proposed rule has no effect upon existing revenues. The proposed rule will increase agency costs because additional staff time and additional data processing will be required. It may be possible to absorb the increased costs within the agency's budget.

Local government costs

None.

Fund sources affected

None.

Long-range fiscal implications

None are known.

Agency Contact

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SECTION 1. Jus 10.03 (4m) is created to read:

Jus 10.03 (4m) "Firearms restrictions record search" means a search of department of justice records to determine whether a person seeking to purchase a handgun is prohibited from possessing a firearm, as provided in s. 175.35 (1) (at), Stats.

SECTION 2. Jus 10.095 is created to read:

Jus 10.095 Processing of information received from circuit courts under chs. 51, 54, and 55, Stats.

(1) (a) The department shall maintain a database that includes:

1. A listing of those persons who have been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), Stats., with respect to whom the department has received that information from a circuit court.
2. A listing of those persons who have obtained relief through a cancellation order under s. 51.20 (13) (cv) 1m. c., 51.45 (13) (i) 2.c., 54.10 (3) (f) 2.c., or 55.12 (10) (b) 3., Stats., with respect to whom the department has received that information from a circuit court.
3. Any identifying information that has been provided by a circuit court to the department under subd. 1. or 2.

(b) The department shall in a timely manner provide relevant information that has been added to the departmental database to the national instant criminal background check system, 28 CFR Part 25, in accordance with system procedures.

(2) Except as provided in sub. (1) (b) and s. 175.35 (2g) (c), Stats., the department may not disclose information from the departmental database.

Note: The promulgation of this section is required by s. 175.35 (2g) (d), Stats., as created by 2009 Wisconsin Act 258, sec. 13, which directs the department of justice to promulgate rules to convey in a timely manner to the national instant criminal background check system certain information concerning firearms restrictions that is received by the department from circuit courts in proceedings under chs. 51, 54, and 55, Stats.

SECTION 3. Jus 10.11 (1) is amended to read:

Jus 10.11 Fees. (1) The department shall charge a dealer a \$5 fee for each record search the dealer requests under s. Jus 10.06 (1) (d) as set forth in s. 175.35, Stats. A dealer may collect the \$5 fee from the transferee.

SECTION 4. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (intro.), Stats.

Dated: 6-29-12

WISCONSIN DEPARTMENT OF JUSTICE

/s/ _____
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Attorney General