



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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April 29, 2019

HAND-DELIVERED

Senator Stephen Nass, Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 10 South, Capitol

Representative Joan Ballweg, Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 210 North, Capitol

Re: Petition to repeal Wis. Admin. Code ch. Jus 14

Dear Senator Nass and Representative Ballweg:

The Wisconsin Department of Justice (DOJ) seeks to repeal Wisconsin Administrative Code chapter Jus 14, which formerly established various requirements for pepper spray products sold in Wisconsin for private defensive use. A copy of the proposed rule is attached.

Prior to 2013 Wisconsin Act 77, Wis. Stat. § 941.26(4)(i)2. required DOJ to promulgate rules governing standards for pepper spray devices, including percentage of active ingredients, range of spray, and weight. In addition, Wis. Stat. § 941.26(4)(j)2. required DOJ to promulgate rules governing safety packaging for pepper spray devices. The statute also made it a Class A misdemeanor to sell a pepper spray device that did not satisfy DOJ's safety rules or include the required packaging. *See* Wis. Stat. § 941.26(4)(i)1. and (j)1. (2011–12).

Act 77 repealed Wis. Stat. § 941.26(4)(i), including both subparagraphs 1. and 2. DOJ's authority to promulgate rules governing standards for pepper spray devices has been eliminated, as has the prohibition on the sale of pepper spray devices that do not meet those standards.

Act 77 also repealed Wis. Stat. § 941.26(4)(j)2., thereby eliminating DOJ's authority to promulgate rules governing safety packaging for pepper spray devices. The remaining portions of Wis. Stat. § 941.26(4)(j) have been revised and amended so that it is now a Class A misdemeanor to sell a pepper spray device that does not come

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with a proper label and written safety instructions. The previous requirement prohibiting sale of a device that did not comply with DOJ's safety packaging rules has been eliminated.

In addition, Act 77 created Wis. Stat. § 941.26(4)(m), which expressly prohibits DOJ from promulgating or enforcing any rule that regulates pepper spray devices.

In summary, Act 77 eliminated DOJ's authority to promulgate or enforce such a rule. Wisconsin Stat. § 941.26(4)(m) states: "The department of justice may not promulgate or enforce any rule that regulates a device or container described under par. (a)." Wisconsin Stat. § 941.26(4)(a) states: "Subsections (1g) to (3) do not apply to any device or container that contains a combination of oleoresin of capsicum and inert ingredients but does not contain any other gas or substance that will cause bodily discomfort." Jus 14 is an "unauthorized rule," as defined in Wis. Stat. § 227.26(4)(a).

DOJ therefore seeks to repeal Jus 14 by using the expedited process under Wis. Stat. § 227.26(4).

Sincerely,

Eric J. Wilson
Deputy Attorney General

JLK:CPK:alm

Enclosure