



STATE OF WISCONSIN
Department of Justice

Clearinghouse Rule 19-063

**PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF JUSTICE
REPEALING A RULE**

The Wisconsin Department of Justice is petitioning the Joint Committee for the Review of Administrative Rules to repeal rules DOJ has determined to be unauthorized using the process under Wis. Stat. § 227.26(4).

PROPOSED ORDER

An order of the Wisconsin Department of Justice to repeal Jus 14, which formerly established various requirements for pepper spray products sold in Wisconsin for private defensive use.

ANALYSIS BY THE WISCONSIN DEPARTMENT OF JUSTICE (DOJ)

Statutes interpreted:

Wis. Stat. § 941.26(4)(i) & (j) (2011–12); Wis. Stat. § 941.26(4)(a) & (m)

Statutory authority:

Wis. Stat. § 941.26(4)(m)

Explanation of statutory authority:

2013 Wisconsin Act 77 (“Act 77”) created Wis. Stat. § 941.26(4)(m) and eliminated DOJ’s authority to promulgate or enforce any rule that regulates pepper spray devices.

Plain language analysis and summary of the proposed rule:

The proposed rule repeals Jus 14, which formerly established various requirements for pepper spray products sold in Wisconsin for private defensive use. Act 77 eliminated DOJ's authority to promulgate or enforce such a rule.

Prior to 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. & (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Act 77 repealed Wis.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Act 77 also repealed Wis.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 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.

Jus 14 conflicts with a state statute. Section 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)." Section 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."

In sum, Jus 14 is an "unauthorized rule," as defined in Wis. Stat. § 227.26(4)(a). It should be repealed.

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TEXT OF THE PROPOSED RULE

SECTION 1. Jus 14 is repealed.

SECTION 2. EFFECTIVE DATE. The rule repealed 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)
