

Assembly Hearing Slip

(Please print plainly)

Date: 2/16/00

Bill No. RS31

Of
Subject _____

(Name) Rep Sukora

(Street Address or Route Number)

(City & Zip Code)

(Representing)

Speaking *In favor:*

Speaking *against:*

Registering *In favor:*

Registering *against:*

Speaking *for information only:*

Neither *for nor against:*

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/11/00

Bill No. AS 591

Of
Subject Widening of the
Twinons Division

(Name) Rep Perry

(Street Address or Route Number)

(City & Zip Code)

(Representing)

Speaking *In favor:*

Speaking *against:*

Registering *In favor:*

Registering *against:*

Speaking *for information only:*

Neither *for nor against:*

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2-16-00

Bill No. SB PB591

Of
Subject FIREWORKS

(Name) Wayne Schulte

(Street Address or Route Number)

(City & Zip Code)

(Representing)

Speaking *In favor:*

Speaking *against:*

Registering *In favor:*

Registering *against:*

Speaking *for information only:*

Neither *for nor against:*

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 16 February 2000

Bill No. AB 591

Subject: _____

(Name) Senator Fred Risser

(Street Address or Route Number) 220 South Cay St

(City & Zip Code) _____

(Representing) _____

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 02/16/00

Bill No. AB 591

Subject: _____

(Name) Steven C. Herliker

(Street Address or Route Number) 310 Lakeside

(City & Zip Code) Madison

(Representing) Madison Police Assoc

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/16/00

Bill No. AB 591

Subject: Arbors

(Name) Bryan Bruggesen

(Street Address or Route Number) 416 Sherman Ave

(City & Zip Code) Madison WI 53705

(Representing) Arbors Assoc

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/16/60

Bill No. AB 53

Or
Subject _____

Alvo Oronhor
(Name)

(Street Address or Route Number)

W 7th Wicks Ave
(City & Zip Code)
(Representing)

Speaking *in favor*:

Speaking *against*:

Registering *in favor*:

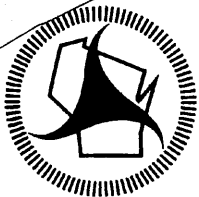
Registering *against*:

Speaking for *information only*:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

X



Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P.O. Box 7910
Madison, WI 53707-7910

Telephone: 608-266-8810
FAX: 608-267-6734
E-Mail: ogc.exec@dot.state.wi.us

To: Don Salm
From: Chris Paulsen
Date: January 27, 2000
Re: Questions concerning AB 591

Arable Breunend State Patrol

This memo is in response to the questions asked in your January 11th memo to Joe Maassen and John Sobotik.

1. Does this bill grant the State Patrol either new authority or expanded authority to enter our homes and warehouses without our consent? Can the State Patrol enter private property against the wishes of a property owner? Can they do so without a search warrant?

No, the bill does not expand the State Patrol's search authority to enter homes or warehouses without consent.

Discussion: While the language of the bill seems to grant the Patrol broad powers to "enter any place where vehicles subject to this chapter [] are stored or parked at any time" (lines 7 - 9 AB 591), this authority remains subject to citizens' right to be free from unreasonable searches and seizures under the Fourth Amendment of the U. S. Constitution and Article I, Sec. 11 of the Wisconsin Constitution. The Wisconsin Supreme Court has stated that because the federal and state constitutions are so similar in their language guaranteeing the right to be free from unreasonable searches and seizures, it will look to and apply the law as it has been developed by the U.S. Supreme Court. *State v. Mendoza*, 220 Wis2d 803, 817 (1998).

The U.S. Supreme Court has stated that citizens have a very high expectation of privacy in their homes, and absent extreme exigent circumstances, a law enforcement officer must have a valid warrant to search a person's home for suspected contraband or instruments of criminality. A warrantless search is per se illegal. *See v. City of Seattle*, 387 U.S. 541, 543 (1967). But the caselaw evolution of search and seizure law has carved out eight exceptions to the warrant requirement: the automobile exception, the consent exception, the plain view exception, the pervasively regulated business exception, the investigatory stop exception, the search incident to arrest exception, the stop and frisk exception, and the vehicle inventory exception.

The most relevant exceptions as they pertain to AB 591 are the pervasive regulation, investigatory stop, automobile, and plain view. The U.S. Supreme Court has ruled that a person has a lesser expectation of privacy on public highways than they enjoy in their homes, because motor vehicles and the highway system are pervasively regulated. (See, e.g. *California v. Carney*, 471 U.S. 386 (1985)). Because of this lesser degree of privacy expectation, a person's vehicle (or a pervasively regulated business) may be subjected to a warrantless search if: 1.) there is a substantial government interest involved; 2.) a warrantless search must be necessary to further the government interest, and; 3.) there must be a minimum level of certainty and regularity to provide an adequate substitute for a warrant. *Donovan v. Dewey*, 452 U.S. 594, 602-04 (1981). (See also *New York v. Burger*, 482 U.S. 691 (1987)).

In order for an officer to stop a vehicle on a state highway under the investigatory stop exception, the officer must have reasonable suspicion to justify the stop, and this reasonable suspicion must be based upon objective observations and conclusions of a law officer based upon training and experience. *United States v. Cortez*, 449 U.S. 411 (1981). If the stop and the resulting discovery of contraband is challenged

in court, the court will look at the totality of circumstances to determine whether the officer had sufficient reasonable suspicion to stop the vehicle. The Court has ruled that a precise definition of "probable cause" and "reasonable suspicion" is not possible, because each situation involving warrantless searches involves a specific set of facts and events unique to each circumstance. The facts and circumstances must be such that a reasonably prudent person would believe that a search would reveal evidence of a crime. Texas v. Brown, 460 U.S. 730, 742 (1983).

The rationale behind the "automobile exception" to the requirement of a warrant is that a vehicle is readily mobile and that in the time it would take an officer to obtain a warrant, the vehicle could be moved. Also, individuals have a lesser expectation of privacy in their cars than they do in their homes or businesses. Carroll v. United States, 267 U.S. 132 (1925). In subsequent interpretations of this warrant exception, the Supreme Court stated:

When a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place *not regularly used for residential purposes* -- temporary or otherwise -- the two justifications for the vehicle exception come into play. First, the vehicle is obviously readily mobile by the turn of an ignition key, if not actually moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation *inapplicable to a fixed dwelling*. (Emphasis added) California v. Carney, 471 U.S. 386, 392 (1985). Followed and applied in Wisconsin by State v. Tompkins, 144 Wis.2d 116, 129 (1988).

Under the automobile exception, if the vehicle is parked "in a place not regularly used for residential purposes," the exception does not apply and the officer must obtain a warrant. Even in situations where the exception does apply, the officer must have probable cause to suspect that there is contraband in the vehicle before initiating a search.

The "plain view" exception requires probable cause and exigent circumstances for an officer to believe that a vehicle has been used in the commission of a crime before a warrantless search may be conducted. Even then, the search has limitations -- it must be parked on a street or in view of the public at large, and the officer may only examine the external perimeter of the vehicle -- what is in "plain view" of the public. Cardwell v. Lewis, 417 U.S. 583 (1974). (See also Katz v. United States, 389 U.S. 347 (1967) - a person's expectation of privacy is lessened when objects are left in plain view of the public).

These questions were forwarded to Major Gerald Zuhlsdorf of the Wisconsin State Highway Patrol for his input on how AB 591 would be enforced. The State Patrol would most likely implement enforcement measures as part of routine state highway patrol. In that context, troopers and inspectors would not be trying to actively seek out illegally owned fireworks by attempting to enter homes and warehouses, but rather, might discover violations as they encounter them as part of routine traffic stops.

2. What is the legal "search authority" of the state patrol under 110.07?

As discussed above, the State Patrol's search authority is tempered by both the state and federal constitutions, and the Wisconsin and U.S. Supreme Courts' rulings on permissible search activity. Generally, law enforcement personnel may not enter a home without a warrant, absent probable cause and exigent circumstances that would justify entry, or with the owner's explicit consent. Probable cause and exigent circumstances must exist for the warrantless search of an automobile. The Wisconsin Supreme Court has noted that, "[t]he requirement of probable cause for the officer to search an automobile for controlled substances is a strong deterrent to police invasion." Tompkins at 135.

Also, sec. 968.10 Wis. Stats. governs permissible search and seizures, and limits the authority specifically to searches made:

- (1) Incident to a lawful arrest;
- (2) With consent;
- (3) Pursuant to a valid search warrant;
- (4) With the authority and within the scope of a right of lawful inspection;
- 5) Pursuant to a search during an authorized temporary questioning as provided in s. 968.25; or
- (6) As otherwise authorized by law

It is important to note that while this statute delineates search and seizure authority (in effect, codifying some of the exceptions to the warrant requirement described in answer to Question 1, pp 1 - 2 above), the State Patrol does not derive investigatory powers under chapter 968 -- criminal investigations are conducted by other law enforcement agencies. The State Patrol has arrest powers under sec. 968.07, and therefore may arrest an individual who is subject to an arrest warrant or if there is reasonable grounds for a trooper or inspector to believe that a person "is committing or has committed a crime" (Sec. 968.07(1)(d)), but the State Patrol does not conduct investigations into criminal matters.

Major Zuhlsdorf confirmed that AB 591 would enable the State Patrol to issue citations under sec. 167.10.

3. The bill uses the word "arrest" for a 167.10 violation remedy. In 167.10, no authority is given to any law enforcement agency to make an "arrest" for a violation under 167.10. Can the language in the bill be clarified and instead say "cite" or "issues a citation" as implied in 167.10? The State Patrol agreed that word "arrest" was misleading. They suggested that more accurate wording be used. Can the language in the bill be clarified so it is clearer an individual can not be arrested for a violation of 167.10?

Currently, the State Patrol has the authority to arrest for sec. 167.10 violations under its general arrest powers granted by sec. 110.07(2m) ("any officer of the state traffic patrol shall have the powers of a peace officer under s. 59.28, except that the officer shall have the arrest powers of a law enforcement officer under s. 968.07, regardless of whether the violation is punishable by forfeiture or criminal penalty"). The amendment to 110.07 would give the State Patrol the additional enforcement option of issuing a citation for sec. 167.10 violations rather than being forced to choose between the extremes of either arresting the offender or simply warning the violator.

The language of the bill could be clarified to make this arrest/citation option more explicit. It appears that the amended portion of the existing statute inserted "167.10(3)(a)" (line 8 of AB 591) in a provision that already granted arrest powers for other enumerated violations contained in sec. 110.07(1)(a)(3), Stats. Major Zuhlsdorf stated that troopers and inspectors would view a violation under sec. 167.10(3)(a) as a forfeiture action, not as an arrest.

In order to clarify that the State Patrol would have the discretion to issue a citation for sec. 167.10 violations, lines 7- 11 of AB 591 could be amended to read:

110.07(1)(a)3. Have authority to enter any place where vehicles subject to this chapter, ss. 167.10(3)(a), 167.31(2)(b) to (d) and 287.81 and chs. 194, 218 and 341 to 350 are stored or parked at any time to examine such vehicles, or to stop such vehicles while in route at any time upon the public highways to examine the same and make arrests for all violations thereof. Such traffic officers shall have authority to make arrests or issue citations for violations of 167.10(3)(a).

AB 591 grants citation authority to the State Patrol for sec. 167.10 violations in line 18 of the bill by creating a new provision, sec. 345.11(1t), which states: "The uniform traffic citation may be used by a traffic officer employed under s. 110.07 for a violation of s. 167.10(3)(a) when committed on a highway."

According to Major Zuhlsdorf, it is the intention of the State Patrol to issue citations for sec. 167.10 violations in the vast majority of instances, because the citation process for that offense would be much less burdensome to both the offender and to the State Patrol.

4. Under existing law, what kind of training does the State Patrol receive regarding fireworks regulations?

Troopers and inspectors would be trained in a similar manner as in other criminal law training, according to Major Zuhlsdorf. They are trained to recognize the essential elements of a violation, in order to decide whether a particular situation encountered on the job conforms to the elements of a violation. This type of training enables them to distinguish actual violations of law from nonviolations. However, he acknowledged that in the area of fireworks, the legal definitions are difficult to readily apply in the field.

Major Zuhlsdorf indicated that Alice O'Connor, Executive Director of the Wisconsin Fireworks Association, has offered the fireworks industry's assistance in developing training that the State Patrol would implement. This training would aid field identification of various types of fireworks devices in order to determine which devices require a permit and which do not. The 50th Recruit Class program would receive this training, and then the State Patrol would decide whether to include such training in the Trooper/Inspector In-Service Training for 2001.

5. Does this bill grant the State Patrol or any other law enforcement entity in Wisconsin the authority to enter private property without a search warrant?

No, except as discussed in answers to Questions 1 and 2 above. Police searches are subject to state and federal constitutional rights, and the interpretation of those rights as they have been interpreted by the U.S. and Wisconsin Supreme Courts. The bill does not eliminate or diminish the existing limitations of law enforcement searches of private property. In fact, most searches of motor vehicles are conducted without a warrant, due to their inherent mobility, lower expectation of privacy, and the pervasive regulation of motor vehicles and state highways.

6. How will the State Patrol stop vehicles, which are transporting legal fireworks to approved fireworks displays? (12 hour rule) Will the general public be treated differently?

In order to stop a vehicle, troopers and inspectors must have reasonable suspicion that a violation has occurred. As discussed above, this "reasonable suspicion" standard is difficult to define, but would be applied to the general public as well as to vehicles transporting legal fireworks. Absent some measure of exigent circumstances that would give rise in a trooper's or inspector's mind to *reasonably* suspect that a violation has occurred, the trooper or inspector would not stop a vehicle.

7. How will the State Patrol determine what fireworks are legal given that there are over 920 different local ordinances? How will this bill be enforced where it is in conflict with local ordinances?

The State Patrol, working in conjunction with the fireworks industry, will provide training to its troopers and inspectors that will enable them to identify various types of fireworks devices (This training is briefly discussed in the answer to Question 4, top of this page).

As to conflicts with local ordinances, the State Patrol has indicated that it views enforcement of AB 591 as being a part of routine state highway patrol. Because AB 591 references and affects sec. 345.11 and sec. 345.20, this interpretation is valid. If viewed as a traffic regulatory measure under these statutes, AB 591, if enacted, would have precedence over local ordinances. The Wisconsin Supreme Court has ruled that the state has pre-empted the field of traffic regulations by enacting chapters 341 to 348 and sec.

349.03, Wis. Stats., and municipalities must conform their traffic regulatory ordinances with state law. Janesville v. Walker, 50 Wis.2d 35 (1971).

8. How will the State Patrol determine who is required to have a users permit and who is not?

Troopers and inspectors would receive training to identify the types of fireworks for which a permit is required, as discussed more fully in the answer to Question 4, above.

If fireworks are discovered in the course of routine state highway patrol and appear to fall into the category of fireworks requiring a permit, an individual would be asked to produce a permit for the State Patrol's inspection. When examining a permit, the State Patrol would have to determine whether the permit was issued by the appropriate municipality.

9. Under this bill, what will prevent the State Patrol or any other law enforcement authority from waiting outside our retail operations and issuing group citations to any nonresident customers who purchase legal fireworks from us?

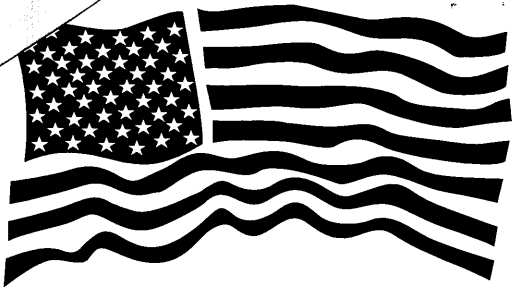
State troopers and inspectors will enforce this provision only as a part of routine state highway patrol, and do not intend to specifically target fireworks infractions. The officer would need reasonable suspicion to suspect that a violation occurred before he or she could initiate a traffic stop.

10. What is the extent of the State Patrol's authority on Wisconsin roads? Will a motorist be pulled over if an officer suspects the person has purchased fireworks?

No. Mere suspicion alone does not entitle any officer to infringe on constitutional rights. The pervasive regulation exception and the investigatory stop exceptions to the requirement of a search warrant, as discussed in Questions 1 and 2, apply here. The patrol's authority is tempered by individual constitutional rights, as interpreted by the courts. Under the exceptions to the requirement of a search warrant enumerated by the U.S. Supreme Court, a motorist could be stopped if an officer has reasonable suspicion to believe that a violation has occurred. This "reasonable suspicion" requirement has not been specifically defined by the Court, because "reasonable suspicion" relies upon objective observations of an officer under the totality of the given circumstances. The situation would have to be viewed under all the relevant facts to determine whether a trooper or inspector had reasonable suspicion to believe that a motorist has violated sec. 167.10.

11. If the intent of the bill is solely to ease paperwork burdens for fireworks citations, why isn't the State Patrol working to reduce paperwork in other products or cumbersome paperwork related to other industries? Why is the fireworks industry being singled out?

In attempting to answer this question, Major Zuhlsdorf noted that this measure was proposed by the Wisconsin Trooper's Association (WTA). Major Zuhlsdorf surmises that county and municipal officers are able to issue a citation for illegal fireworks possession, and then the motorist may continue to their destination. This process is less time consuming and more convenient than the arrest process, easing enforcement burdens upon both the officer and the violator. Under current law, a state trooper or inspector does not have the power to issue a citation for possessing illegal fireworks without a permit, even when the violation is discovered by a trooper or inspector in routine state highway patrol. This is true only because the citation process is not presently available under existing law for this type of infraction. The State Patrol must take appropriate enforcement action for this violation, which is currently the much more cumbersome and inconvenient process of arrest. The State Patrol supports the corrective action proposed under AB 591 because, if enacted, would expedite enforcement with the availability of the less onerous citation method of enforcing sec. 167.10.



Wisconsin Fireworks Association

Larry Cornellier, President ★ Howard Christianson, Vice President

February 16, 2000

TO: Chairman Jeff Stone and Members of the Assembly Highway Safety Committee

FR: Alice O'Connor
For the Wisconsin Fireworks Association

RE: Oppose Assembly Bill 591

AB 591 expands the powers and duties of the state patrol to include the enforcement of 167.10 (a), Stats., to enter any place or vehicle to make arrests or issue citations.

NO DEMONSTRATED NEED

Even though the Wisconsin State Patrol has assured us that the intent behind this bill is to simplify paperwork when issuing fireworks-related citations, we do not feel they have demonstrated a significant need for it. A letter dated January 27, 2000 to Representative Tom Sykora from Casey Perry of the Wisconsin Trooper's Association references an e-mail from William Harley of Wisconsin State Patrol Central Headquarters in which Mr. Harley states:

"I contacted the Districts asking them to check their offense / incident logs for fireworks related arrests/incidents for 1998/1999. According to the poll the Division had 4 or 5 fireworks related incidents for those two years."

It does not make sense to the Fireworks Association to push for a change in state law for a handful of violations over a two-year period.

HOME RULE

Wisconsin is a “home rule” state with each local community deciding fireworks regulations on its own.

In a January 27, 2000 memo from DOT attorney Chris Paulsen to Legislative Council Attorney Don Salm, Paulsen finds that “if viewed as a traffic regulatory measure under these statutes, AB 591, if enacted, would have precedence over local ordinances.”

BILL GOES BEYOND THE ABILITY TO ISSUE CITATIONS

We are also concerned about the authority granted the State Patrol to “to enter any place where vehicles subject to s. 167.10 (3) (a), Stats., are stored or parked at any time to examine such vehicles, or to stop such vehicles while en route at any time...” Mr. Paulsen states that “the bill does not expand the State Patrol’s search authority to enter homes or warehouses without consent.” If this is true, the Fireworks Association does not understand why this language is included in this bill.

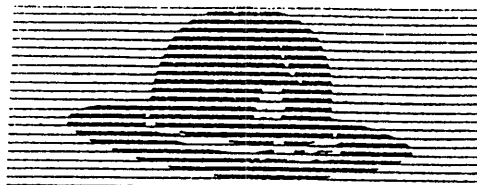
DOT attorney Paulson opines that the “**arrest**” authority granted to the State Patrol in AB 591 “**could be clarified to make this arrest/citation option more explicit.**” We agree and also fail to understand why the bill specifically authorizes arrests for violations of 167.10 given that, according to attorney Paulson, “the State Patrol has the authority to arrest for sec. 167.10 violations under its general arrest powers.”

The intention of AB 591, as originally explained to us, is to cut down on paperwork by allowing a State Patrol Officer to issue a simple citation for a fireworks violation on the highway. Arrest authority, search authority, stopping authority... none of these seem to have much to do with reducing paperwork.

We have no philosophical difference with the State Patrol’s desire to limit the paperwork that might accompany a fireworks violation, but this bill seems to do a lot more than simplify paperwork.

For these reasons, especially the unsubstantiated need for this proposed change, we strongly urge the Committee to vote no on AB 591.

Executive Director
Casey Perry
caseyperry@juno.com



Wisconsin Troopers' Association, Inc.
2099 Ironwood Dr, Green Bay, WI 54304
1-800-232-1392

President
Steven Williams
srwilliams@centurytel.net

January 27, 2000

Representative Tom Sykora
Wisconsin State Assembly
State Capitol
PO Box 8353
Madison, WI 53708-8353

Subject: **DIVISION OF STATE PATROL ARREST TOTAL-FIREWORKS**

Dear Representative Sykora,

Enclosed is an e-mail copy of a letter from Sgt. William Harley, DSP, indicating their records reflect either four or five arrest/incidents during 1998 and 1999. If you have any other questions please do not hesitate to call.

Sincerely,

Casey Perry

Enclosure (1)

CC: Wayne Schulte, President Victory Firewrks, Inc.
Alice O'Conner



Harley, William

From: Harley, William
Sent: Tuesday, January 25, 2000 10:51 AM
To: 'wtapres@juno.com'
Cc: Schumacher, David; Lonsdorf, Daniel; Young, Robert; VanBuren, Doug
Subject: DSP Arrest/Incident Totals for Illegal Fireworks in 1998/1999

Casey, reference your letter of December 14, 1999 to Superintendent Schumacher.

I contacted the Districts asking them to check their offense/incident logs for fireworks related arrests/incidents for 1998/1999.

According to the poll the Division had 4 or 5 fireworks related incidents for those two years. If you have any further question, please call.

William A. Harley
Wisconsin State Patrol Central HQs
(608) 267-4590
william.harley@dot.state.wi.us



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: February 2, 2000

TO: REPRESENTATIVE TOM SYKORA

FROM: Don Salm, Senior Staff Attorney

SUBJECT: Analysis of 1999 Assembly Bill 591, Relating to Enforcement by State Traffic Patrol of Restrictions on the Possession and Use of Fireworks; Response to Issues Raised Concerning the Scope of Assembly Bill 591

This memorandum, prepared at the request of your aide Sara Jermstad:

1. Analyzes 1999 Assembly Bill 591, relating to enforcement by the state traffic patrol of restrictions on the possession and use of fireworks.
2. Responds to various questions raised by the Wisconsin Fireworks Association in a letter from Alice O'Connor, lobbyist for the Wisconsin Fireworks Association, to you (dated December 28, 1999), a copy of which is attached.

A. ANALYSIS OF 1999 ASSEMBLY BILL 591

1. Current Law

Under current law, state traffic patrol officers are granted specific powers and duties, including the enforcement of state traffic laws, the enforcement of the conditions placed on the possession in transport of a firearm, bow or crossbow and the enforcement of the prohibition against littering on a highway. A copy of s. 110.07, Stats., relating to the powers and duties of state traffic patrol officers, is attached.

Under current law, a person is prohibited from possessing or using fireworks without a permit unless certain conditions apply. A person who uses or possesses fireworks without a permit is subject to a fine of not more than \$1,000. A copy of s. 167.10, Stats., relating to regulation of fireworks, is attached. *Note, in particular, s. 167.10 (3), Stats., relating to possession or use of fireworks without a user's permit.*

2. Assembly Bill 591

1999 Assembly Bill 591 expands the powers and duties of state traffic patrol officers to include the enforcement of the permit requirement for the possession and use of fireworks where applicable to highways. Under the bill, state traffic patrol officers have authority to:

a. Enforce and assist in the administration of s. 167.10 (3) (a), Stats., relating to the use and possession of fireworks (copy attached).

b. Have authority to enter any place where vehicles subject to s. 167.10 (3) (a), Stats., are stored or parked at any time to examine such vehicles, or to stop such vehicles while en route at any time upon the public highways to examine the vehicles and make arrests for all violations of s. 167.10 (3) (a), Stats.

The bill also specifies that in exercising this new power and duty, state traffic patrol officers may issue *uniform traffic citations* for a violation of s. 167.10 (3) (a), Stats., when committed on a highway.

The bill also: (a) prohibits a court from forwarding records of convictions for violations of the fireworks permit requirement to the Department of Transportation (DOT); and (b) prohibits DOT from assessing persons demerit points for such convictions.

B. RESPONSE TO QUESTIONS RAISED BY THE WISCONSIN FIREWORKS ASSOCIATION

In order to respond fully to the questions raised by the Wisconsin Fireworks Association (see attached letter from Alice O'Connor, lobbyist for the Association), I contacted several attorneys in the General Counsel's Office at the DOT. I have previously forwarded to you a copy of their responses, but I am attaching a copy of the responses to this memorandum for your reference. As I previously noted to you, the DOT responses seem to more than adequately address the issues set forth in the Association's letter and I fully agree with the legal conclusions in the DOT responses.

If I can be of any further assistance to you in this matter, please contact me at 266-8540 or e-mail me at don.salm@legis.state.wi.us.

DLS:jal;ksm

Attachments



December 28, 1999

TO: State Representative Tom Sykora

FROM: Alice O'Connor, *for the Wisconsin Fireworks Association*

Wisconsin Fireworks Association Questions Related to AB 591

1. Does this bill grant the State Patrol either new authority or expanded authority to enter our homes and warehouses without our consent? Can the State Patrol enter private property against the wishes of a property owner? Can they do so without a search warrant?
2. Would you ask the Legislative Council attorneys to clarify what the legal "search authority" of the state patrol is under 160.07?
3. The bill uses the word "arrest" for a 167.10 violation remedy. In 167.10, no authority is given to any law enforcement agency to make an "arrest" for a violation under 167.10. Can the language in the bill be clarified and instead say "cite" or "issues a citation" as implied in 167.10?

At our meeting the State Patrol agreed that word "arrest" was misleading. They suggested that more accurate wording be used. Can the language in the bill be clarified so it is clearer an individual can not be arrested for a violation of 167.10?

4. Under existing law, what kind of training does the State Patrol receive regarding fireworks regulations?
5. Does this bill grant the State Patrol or any other law enforcement entity in Wisconsin the authority to enter private property without a search warrant?
6. How will the State Patrol stop vehicles, which are transporting legal fireworks to approved fireworks displays? (12 hour rule) Will the general public be treated differently?

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7. How will the State Patrol determine what fireworks are legal given that there are over 920 different local ordinances? How will this bill be enforced where it is in conflict with local ordinances?
8. How will the State Patrol determine who is required to have a users permit and who is not?
9. Under this bill, what will prevent the State Patrol or any other law enforcement authority from waiting outside our retail operations and issuing group citations to any nonresident customers who purchase legal fireworks from us?
10. What is the extent of the State Patrol's authority on Wisconsin roads? Will a motorist be pulled over if an officer suspects the person has purchased fireworks?
11. If the intent of the bill is solely to ease paperwork burdens for fireworks citations, why isn't the State Patrol working to reduce paperwork in other products or cumbersome paperwork related to other industries? Why is the fireworks industry being singled out?

ATTACHMENT

Sections 110.07 and 167.10, Stats.

110.07 Traffic officers; powers and duties. (1) (a) The secretary shall employ not to exceed 385 traffic officers. Such traffic officers, in addition to the person designated to head them whose position shall be in the classified service, shall constitute the state traffic patrol, and shall:

1. Enforce and assist in the administration of this chapter and chs. 166, 194, 218, 341 to 349 and 351, and ss. 23.33, 125.07 (4) (b), 125.085 (3) (b), 167.31 (2) (b) to (d) and 287.81 and ch. 350 where applicable to highways, or orders or rules issued pursuant thereto.

2. Have the powers of sheriff in enforcing the laws specified in subd. 1. and orders or rules issued pursuant thereto.

3. Have authority to enter any place where vehicles subject to this chapter, ss. 167.31 (2) (b) to (d) and 287.81 and chs. 194, 218 and 341 to 350 are stored or parked at any time to examine such vehicles, or to stop such vehicles while en route at any time upon the public highways to examine the same and make arrests for all violations thereof.

(b) All municipal judges, judges, district attorneys and law enforcement officers shall assist in enforcing this chapter, ss. 167.31 (2) (b) to (d) and 287.81 and chs. 194, 218 and 341 to 351, and orders or rules issued pursuant thereto and shall report to the department the disposition of every uniform traffic citation issued for cases involving those chapters.

(2) The traffic officers employed pursuant to this section shall constitute a state traffic patrol to assist local enforcement officers wherever possible in the regulation of traffic and the prevention of accidents upon the public highways.

(2m) In addition to the primary powers granted by subs. (1) and (2), any officer of the state traffic patrol shall have the powers of a peace officer under s. 59.28, except that the officer shall have the arrest powers of a law enforcement officer under s. 968.07, regardless of whether the violation is punishable by forfeiture or criminal penalty. A state traffic officer shall at all times be available as a witness for the state but shall not conduct investigations for crimes under chs. 939 to 948. The primary duty of a state traffic officer shall be the enforcement of chs. 340 to 351 or of any other law relating to the use or operation of vehicles upon the highway. No state traffic officer shall be used in or take part in any dispute or controversy between employer or employe concerning wages, hours, labor or working conditions; nor shall any such officer be required to serve civil process. The department may assign state traffic officers to safeguard state officers or other persons.

(3) The secretary may employ inspectors who may not wear the uniform of the state patrol, whose duties shall be to enforce and assist in administering s. 346.63, this chapter and chs. 194, 218, 340 to 345 and 347 to 351, s. 23.33, the inspection requirements of s. 121.555 (2) (b) and the requirements under s. 346.45 (4) for vehicles being used to transport hazardous materials. Such inspectors, in the performance of these duties, shall have the powers and authority of state traffic officers. For the purpose of death, disability and retirement coverage, such inspectors shall be subject to ch. 40 as is the state traffic patrol. Subject to sub. (5), the secretary may clothe and equip inspectors as the interest of public safety and their duties require.

(4) In addition to the primary powers granted by sub. (3), any inspector shall have the powers of a peace officer under s. 59.28, except that the inspector shall have the arrest powers of a law enforcement officer under s. 968.07, regardless of whether the violation is punishable by forfeiture or criminal penalty. An inspector shall at all times be available as a witness for the state but shall not conduct investigations for crimes under chs. 939 to 948. The primary duty of an inspector shall be the enforcement of the provisions specified in sub. (3). No inspector may be used in or take part in any dispute or controversy between employer or employee concerning wages, hours, labor or working conditions; nor may an inspector be required to serve civil process. The department may assign inspectors to safeguard state officers or other persons.

(5) (a) In this subsection, "bulletproof garment" has the meaning given in s. 939.64 (1).

(b) Upon request of an officer of the state traffic patrol under sub. (1) or inspector under sub. (3), the department shall make available to the traffic officer or inspector a bulletproof garment that may be used in the performance of his or her duties under this section. The department shall equip a traffic officer or inspector with a bulletproof garment as soon as practicable after receipt of the request from the traffic officer or inspector under this paragraph, provided that each traffic officer or inspector who has made a request before September 1, 1997, shall be equipped with a bulletproof garment by that date.

167.10 Regulation of fireworks. (1) DEFINITION. In this section, "fireworks" means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:

- (a) Fuel or a lubricant.
- (b) A firearm cartridge or shotgun shell.
- (c) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
- (d) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
- (e) A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
- (f) A toy snake which contains no mercury.
- (g) A model rocket engine.
- (h) Tobacco and a tobacco product.
- (i) A sparkler on a wire or wood stick not exceeding 36 inches in length that is designed to produce audible or visible effects or to produce audible and visible effects.
- (j) A device designed to spray out paper confetti or streamers and which contains less than one-quarter grain of explosive mixture.

(k) A fuseless device that is designed to produce audible or visible effects or audible and visible effects, and that contains less than one-quarter grain of explosive mixture.

(L) A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces audible or visible effects, or audible and visible effects.

(m) A cylindrical fountain that consists of one or more tubes and that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.

(n) A cone fountain that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.

(2) SALE. No person may sell or possess with intent to sell fireworks, except:

(a) To a person holding a permit under sub. (3) (c);

(b) To a city, village or town; or

(c) For a purpose specified under sub. (3) (b) 2. to 6.

(3) USE. (a) No person may possess or use fireworks without a user's permit from the mayor of the city, president of the village or chairperson of the town in which the possession or use is to occur or from an official or employe of that municipality designated by the mayor, president or chairperson. No person may use fireworks or a device listed under sub. (1) (e) to (g) or (i) to (n) while attending a fireworks display for which a permit has been issued to a person listed under par. (c) 1. to 5. or under par. (c) 6. if the display is open to the general public.

(b) Paragraph (a) does not apply to:

1. The city, village or town, but municipal fire and law enforcement officials shall be notified of the proposed use of fireworks at least 2 days in advance.

2. The possession or use of explosives in accordance with rules or general orders of the department of commerce.

3. The disposal of hazardous substances in accordance with rules adopted by the department of natural resources.

4. The possession or use of explosive or combustible materials in any manufacturing process.

5. The possession or use of explosive or combustible materials in connection with classes conducted by educational institutions.

6. A possessor or manufacturer of explosives in possession of a license or permit under 18 USC 841 to 848 if the possession of the fireworks is authorized under the license or permit.

7. Except as provided in par. (bm), the possession of fireworks in any city, town or village while transporting the fireworks to a city, town or village where the possession of the fireworks is authorized by permit or ordinance.

(bm) Paragraph (a) applies to a person transporting fireworks under par. (b) 7. if, in the course of transporting the fireworks through a city, town or village, the person remains in that city, town or village for a period of at least 12 hours.

(c) A permit under this subsection may be issued only to the following:

1. A public authority.
2. A fair association.
3. An amusement park.
4. A park board.
5. A civic organization.
6. A group of resident or nonresident individuals.
7. An agricultural producer for the protection of crops from predatory birds or animals.

(d) A person issued a permit for crop protection shall erect appropriate warning signs disclosing the use of fireworks for crop protection.

(e) The person issuing a permit under this subsection may require an indemnity bond with good and sufficient sureties or policy of liability insurance for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of fireworks under the permit. The bond or policy, if required, shall be taken in the name of the city, village or town wherein the fireworks are to be used, and any person injured thereby may bring an action on the bond or policy in the person's own name to recover the damage the person has sustained, but the aggregate liability of the surety or insurer to all persons shall not exceed the amount of the bond or policy. The bond or policy, if required, together with a copy of the permit shall be filed in the office of the clerk of the city, village or town.

(f) A permit under this subsection shall specify all of the following:

1. The name and address of the permit holder.
2. The date on and after which fireworks may be purchased.
3. The kind and quantity of fireworks which may be purchased.
4. The date and location of permitted use.
5. Other special conditions prescribed by ordinance.

(g) A copy of a permit under this subsection shall be given to the municipal fire or law enforcement official at least 2 days before the date of authorized use.

(h) A permit under this subsection may not be issued to a minor.

(4) OUT-OF-STATE AND IN-STATE SHIPPING. This section does not prohibit a resident wholesaler or jobber from selling fireworks to a person outside of this state or to a person or group granted a permit under sub. (3) (c) 1. to 7. A resident wholesaler or jobber that ships the fireworks sold under this subsection shall package and ship the fireworks in accordance with applicable state and federal law by, as defined in s. 194.01 (1), (2) and (11), common motor carrier, contract motor carrier or private motor carrier.

(5) LOCAL REGULATION. (a) Subject to pars. (b) to (e), a city, village, town or county may enact an ordinance for any of the following:

1. Defining "fireworks" to include all items included under sub. (1) (intro.) and anything under sub. (1) (e), (f), (i), (j), (k), (L), (m) and (n).

2. Prohibiting the sale, possession or use, as defined by ordinance, of fireworks.

3. Regulating the sale, possession or use, as defined by ordinance, of fireworks.

(b) An ordinance under par. (a) may not be less restrictive in its coverage, prohibition or regulation than this section but may be more restrictive than this section.

(d) A county ordinance enacted under par. (a) does not apply and may not be enforced within any city, village or town that has enacted or enacts an ordinance under par. (a).

(e) Notwithstanding par. (a) or par. (b), no city, village, town or county may enact an ordinance that prohibits the possession of fireworks in that city, town, village or county while transporting the fireworks to a city, town, village or county where the possession of the fireworks is authorized by permit or ordinance.

(6) STORAGE AND HANDLING. (a) No wholesaler, dealer or jobber may store or handle fireworks in premises unless the premises are equipped with fire extinguishers approved by the fire official of the municipality where the premises are located.

(b) No person may smoke where fireworks are stored or handled.

(c) A person who stores or handles fireworks shall notify the fire official of the municipality in which the fireworks are stored or handled of the location of the fireworks.

(d) No wholesaler, dealer or jobber may store fireworks within 50 feet of a dwelling.

(e) No person may store fireworks within 50 feet of a public assemblage or place where gasoline or volatile liquid is dispensed in quantities exceeding one gallon.

(6m) LICENSING AND INSPECTING MANUFACTURERS. (a) No person may manufacture in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) without a fireworks manufacturing license issued by the department of commerce under par. (d).

(b) No person may manufacture in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) unless the person complies with the rules of the department of commerce promulgated under par. (e).

(c) Any person who manufactures in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) shall provide the department of commerce with a copy of each federal license issued under 18 USC 843 to that person.

(d) The department of commerce shall issue a license to manufacture fireworks or devices listed under sub. (1) (e), (f) or (i) to (n) to a person who complies with the rules of the department promulgated under par. (e). The department may not issue a license to a person who does not comply with the rules promulgated under par. (e). The department may revoke a license under this subsection for the refusal to permit an inspection at reasonable times by the department or for a continuing violation of the rules promulgated under par. (e).

(e) The department of commerce shall promulgate rules to establish safety standards for the manufacture in this state of fireworks and devices listed under sub. (1) (e), (f) or (i) to (n).

(f) The department of commerce may inspect at reasonable times the premises on which each person licensed under this subsection manufactures fireworks or devices listed under sub. (1) (e), (f) or (i) to (n).

(7) PARENTAL LIABILITY. A parent, foster parent, treatment foster parent, family-operated group home parent or legal guardian of a minor who consents to the use of fireworks by the minor is liable for damages caused by the minor's use of the fireworks.

(8) ENFORCEMENT. (a) A city, village or town may petition the circuit court for an order enjoining violations of sub. (2), (3) or (6) or an ordinance adopted under sub. (5).

(b) Fireworks stored, handled, sold, possessed or used by a person who violates this section, an ordinance adopted under sub. (5) or a court order under par. (a) may be seized and held as evidence of the violation. Except as provided in s. 968.20 (4), only the fireworks that are the subject of a violation of this section, an ordinance adopted under sub. (5) or a court order under par. (a) may be destroyed after conviction for a violation. Except as provided in s. 968.20 (4), fireworks that are seized as evidence of a violation for which no conviction results shall be returned to the owner in the same condition as they were when seized to the extent practicable.

(9) PENALTIES. (a) A person who violates a court order under sub. (8) (a) shall be fined not more than \$10,000 or imprisoned not more than 9 months or both.

(b) A person who violates sub. (2), (3) or (6) or an ordinance adopted under sub. (5) shall forfeit not more than \$1,000.

(c) A parent or legal guardian of a minor who consents to the use of fireworks by the minor shall forfeit not more than \$1,000.

(g) Whoever violates sub. (6m) (a), (b) or (c) or a rule promulgated under sub. (6m) (e) may be fined not more than \$10,000 or imprisoned not more than 10 years or both.