2013 DRAFTING REQUEST

Bill

Received:	**3/4/2013**	Received By:	**chanaman**
Wanted:	**As time permits**	Same as LRB:	**-0017**
For:	**Frank Lasee (608) 266-3512**	By/Representing:	**Rob**
May Contact:		Drafter:	**chanaman**
Subject:	**Criminal Law - miscellaneous**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Sen.Lasee@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Eliminating rules on pepper spray and other regulations

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	chanaman 3/4/2013	scalvin 3/4/2013	jmurphy 3/4/2013	_____ _____	sbasford 3/4/2013	sbasford 3/4/2013	State S&L

FE Sent For:

at intro

<END>

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	chanaman	/1 sac 03/04/2013	jm 3/4	self		Jacket for Senate	State S&L

FE Sent For:

<END>

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-0017/2
CMH:sacjf

2013 BILL

AN ACT ***to repeal*** 941.26 (4) (f), 941.26 (4) (h), 941.26 (4) (i), 941.26 (4) (j) 1. c. and 941.26 (4) (j) 2.; ***to renumber and amend*** 941.26 (4) (k); ***to consolidate, renumber and amend*** 941.26 (4) (j) 1. (intro.), a. and b.; and ***to create*** 941.26 (4) (g) 1m., 941.26 (4) (k) 2. and 941.26 (4) (m) of the statutes; **relating to:** the regulation of oleoresin of capsicum in containers sold in this state.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Justice (DOJ) to promulgate rules regulating the sale of devices or containers that contain oleoresin of capsicum (commonly known as the pepper in pepper spray). The rules must include safety criteria, requirements to ensure such a device or container is effective and appropriate for self–defense purposes, limits on the percentage of oleoresin of capsicum in such a device or container, and a maximum effective range for such a device or container. A person who intentionally sells a device or container that does not comply with these rules is guilty of a Class A misdemeanor. This bill prohibits DOJ from promulgating rules that regulate such devices or containers.

Current law also prohibits a person from selling a device or container containing oleoresin of capsicum without providing the purchaser with a proper label on the device or container, written safety instructions for using the device or container, and a package that contains a clear, highlighted message to the purchaser cautioning him or her to read and follow the safety instructions. A person who violates one of the prohibitions is guilty of a Class A misdemeanor. This bill

eliminates the requirement to provide a package containing a clear, highlighted message that cautions the purchaser to read and follow the safety instructions.

Also, under current law, a seller of a device or container may not leave an unsold device or container in a place where customers have access to it. This bill eliminates this prohibition.

Finally, under current law, a person under the age of 18 who possesses a device or container containing oleoresin of capsicum is subject to a Class E forfeiture and a person who knowingly sells or distributes such a device or container to a person under the age of 18 is guilty of a Class C forfeiture. Under this bill, these prohibitions do not apply if the person's parent, guardian, or legal custodian gave the device or container to him or her.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 941.26 (4) (f) of the statutes is repealed.

2 **SECTION 2.** 941.26 (4) (g) 1m. of the statutes is created to read:

3 941.26 **(4)** (g) 1m. Subdivision 1. does not apply to an actor who is a parent,
4 guardian, or legal custodian of a person who has not attained 18 years of age if the
5 actor gives the person the device or container.

6 **SECTION 3.** 941.26 (4) (h) of the statutes is repealed.

7 **SECTION 4.** 941.26 (4) (i) of the statutes is repealed.

8 **SECTION 5.** 941.26 (4) (j) 1. (intro.), a. and b. of the statutes are consolidated,
9 renumbered 941.26 (4) (j) and amended to read:

10 941.26 **(4)** (j) Whoever intentionally sells a device or container described under
11 par. (a) without providing the purchaser with ~~all of the following is guilty of a Class~~
12 ~~A misdemeanor: a. A~~ a proper label on the device or container~~. b. Written~~ and
13 written safety instructions for using the device or container is guilty of a Class A
14 misdemeanor.

15 **SECTION 6.** 941.26 (4) (j) 1. c. of the statutes is repealed.

1 **SECTION 7.** 941.26 (4) (j) 2. of the statutes is repealed.

2 **SECTION 8.** 941.26 (4) (k) of the statutes is renumbered 941.26 (4) (k) 1. and
3 amended to read:

4 941.26 **(4)** (k) 1. ~~Any~~ Except as provided in subd. 2., any person who has not
5 attained the age of 18 years and who possesses a device or container described under
6 par. (a) is subject to a Class E forfeiture.

7 **SECTION 9.** 941.26 (4) (k) 2. of the statutes is created to read:

8 941.26 **(4)** (k) 2. Subdivision 1. does not apply if the person's parent, guardian,
9 or legal custodian purchased the device or container for him or her or gave the device
10 or container to him or her.

11 **SECTION 10.** 941.26 (4) (m) of the statutes is created to read:

12 941.26 **(4)** (m) The department of justice may not promulgate or enforce any
13 rule that regulates a device or container described under par. (a).

14 **SECTION 11. Initial applicability.**

15 (1) The treatment of section 941.26 (4) (g) (1m.), (i), and (j) 1. c. and 2. of the
16 statutes first applies to sales that occur on the effective date of this subsection.

17 **(END)**