



## 1995 SENATE BILL 76

February 21, 1995 – Introduced by Senators WEEDEN, LEEAN, PANZER, ZIEN, BRESKE, CHVALA, ROSENZWEIG, BUETTNER and GEORGE, cosponsored by Representatives LORGE, JENSEN, BOYLE, LEHMAN, HARSDF, BRANDEMUEHL, OTT, BALDUS, WILDER, SILBAUGH, HAHN, UNDERHEIM, RYBA and MUSSER. Referred to Committee on Business, Economic Development and Urban Affairs.

1     **AN ACT to amend** 167.10 (1) (i) and (k) to (n), 167.10 (3) (a), 167.10 (4), 167.10  
2           (5) (a) (intro.), 167.10 (5) (a) 1., 167.10 (5) (a) 2., 167.10 (5) (a) 3., 167.10 (6) (e),  
3           167.10 (6m) and 167.10 (8) (b); and **to create** 167.10 (5) (c), 167.10 (5) (d) and  
4           167.10 (8m) of the statutes; **relating to:** changes in the laws regulating  
5           fireworks and granting rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

This bill makes the following changes in the law regulating fireworks, which is administered by the department of industry, labor and human relations. The bill:

1. Revises the descriptions of various fireworks that are excluded from regulation under current law.

2. Eliminates the current law's authority of cities, villages and towns to adopt ordinances that regulate the possession of fireworks, that prohibit the possession of fireworks or that define fireworks to include devices excluded from fireworks regulation under state law.

3. Modifies the current law's restrictions on the sale of fireworks for shipment or delivery out-of-state and on the type of carriers that may ship fireworks out-of-state. Under the bill, a resident wholesaler, dealer or jobber may sell fireworks at wholesale or otherwise for shipment or delivery out-of-state. The fireworks must be shipped or delivered in accordance with federal regulations concerning transportation of hazardous materials and may be shipped or delivered by any common motor carrier, contract motor carrier or private motor carrier.

4. Specifies that the only fireworks seized as evidence of fireworks law violations that may be destroyed are those fireworks that are the actual subject of a conviction for a violation of state or local fireworks law. Any other seized fireworks must be returned to their owners.

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

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

1           **SECTION 1.** 167.10 (1) (i) and (k) to (n) of the statutes are amended to read:

2           167.10 (1) (i) A sparkler on a wire or wood stick not exceeding 36 inches in  
3 length ~~or 0.25 inch in outside diameter which does not contain magnesium, chlorate~~  
4 ~~or perchlorate~~ that is designed to produce audible or visible effects or to produce  
5 audible and visible effects.

6           (k) A fuseless device that is designed to produce an audible sound ~~but not~~  
7 ~~explode, spark, move or emit an external flame after ignition and which does not~~  
8 ~~exceed 3 grams in total weight~~ or visible effects or audible and visible effects, and that  
9 contains less than one-quarter grain of explosive mixture.

10           (L) A device that ~~emits smoke with no external flame and does not leave the~~  
11 ground is designed primarily to burn pyrotechnic smoke-producing mixtures, at a  
12 controlled rate, and that produces audible or visible effects, or audible and visible  
13 effects.

14           (m) A cylindrical fountain ~~not exceeding 100 grams in total weight with an~~  
15 ~~inside tube diameter not exceeding 0.75 inch, designed to sit on the ground and emit~~  
16 ~~only sparks and smoke~~ that consists of one or more tubes and that is classified by the  
17 federal department of transportation as a Class C explosive, as defined in 49 CFR  
18 173.100 (r).

19           (n) A cone fountain ~~not exceeding 75 grams in total weight, designed to sit on~~  
20 ~~the ground and emit only sparks and smoke~~ that is classified by the federal

1 department of transportation as a Class C explosive, as defined in 49 CFR 173.100  
2 (r).

3 **SECTION 2.** 167.10 (3) (a) of the statutes is amended to read:

4 167.10 (3) (a) No person may possess or use fireworks without a user's permit  
5 from the mayor of the city, president of the village or chairperson of the town in which  
6 the possession or use is to occur or from an official or employe of that municipality  
7 designated by the mayor, president or chairperson. No person may use fireworks or  
8 a device listed under sub. (1) (e) to (g) or (i) to (n) while attending a fireworks display  
9 for which a permit has been issued to a person listed under par. (c) 1. to 5. or under  
10 par. (c) 6. if the display is open to the general public.

11 **SECTION 3.** 167.10 (4) of the statutes is amended to read:

12 167.10 (4) OUT-OF-STATE. This section does not prohibit a resident wholesaler,  
13 dealer or jobber from selling fireworks at wholesale, if that wholesaler, dealer or  
14 jobber ships or delivers the fireworks outside of this state in sealed opaque containers  
15 and in accordance with 49 CFR 171 by, as defined in s. 194.01 (1), (2) and (11),  
16 common motor carrier, contract motor carrier or private motor carrier engaged in the  
17 business of shipping or delivering property, or to a person or group granted a permit  
18 under sub. (3) (c) 1. to 7.

19 **SECTION 4.** 167.10 (5) (a) (intro.) of the statutes is amended to read:

20 167.10 (5) (a) (intro.) A Subject to pars. (b), (c) and (d), a city, village, town or  
21 county may enact an ordinance for any of the following, except that a county  
22 ordinance enacted under this paragraph does not apply and may not be enforced  
23 within any city, village or town that has enacted or enacts an ordinance under this  
24 paragraph:

25 **SECTION 5.** 167.10 (5) (a) 1. of the statutes is amended to read:

1           167.10 (5) (a) 1. Defining “fireworks” to include all items included under sub.  
2 (1) (intro.) and anything under sub. (1) (e), (f), (i), (j), (k), (L), (m) and (n).

3           **SECTION 6.** 167.10 (5) (a) 2. of the statutes is amended to read:

4           167.10 (5) (a) 2. Prohibiting the sale, possession or use, as defined by ordinance,  
5 of fireworks.

6           **SECTION 7.** 167.10 (5) (a) 3. of the statutes is amended to read:

7           167.10 (5) (a) 3. Regulating the sale, possession or use, as defined by ordinance,  
8 of fireworks.

9           **SECTION 8.** 167.10 (5) (c) of the statutes is created to read:

10          167.10 (5) (c) An ordinance under par. (a) may not cover, prohibit or regulate  
11 the sale or storage of fireworks by wholesalers, importers, jobbers, dealers or  
12 manufacturers of fireworks who are doing business in this state on the effective date  
13 of this paragraph .... [revisor inserts date].

14          **SECTION 9.** 167.10 (5) (d) of the statutes is created to read:

15          167.10 (5) (d) A county ordinance enacted under par. (a) does not apply and may  
16 not be enforced within any city, village or town that has enacted or enacts an  
17 ordinance under par. (a).

18          **SECTION 10.** 167.10 (6) (e) of the statutes is amended to read:

19          167.10 (6) (e) No person may store fireworks within ~~50~~ 25 feet of a public  
20 assemblage or place where gasoline or volatile liquid is ~~sold~~ dispensed in quantities  
21 exceeding one gallon.

22          **SECTION 11.** 167.10 (6m) of the statutes is amended to read:

23          167.10 (6m) LICENSING AND INSPECTING MANUFACTURERS. (a) ~~After June 30,~~  
24 ~~1985, no~~ No person may manufacture in this state fireworks or a device listed under

1 sub. (1) (e), (f) or (i) to (n) without a fireworks manufacturing license issued by the  
2 department of industry, labor and human relations under par. (d).

3 (b) ~~After June 30, 1985, no~~ No person may manufacture in this state fireworks  
4 or a device listed under sub. (1) (e), (f) or (i) to (n) unless the person complies with the  
5 rules of the department of industry, labor and human relations promulgated under  
6 par. (e).

7 (c) Any person who, ~~after June 30, 1985,~~ manufactures in this state fireworks  
8 or a device listed under sub. (1) (e), (f) or (i) to (n) shall provide the department of  
9 industry, labor and human relations with a copy of each federal license issued under  
10 18 USC 843 to that person.

11 (d) The department of industry, labor and human relations shall issue a license  
12 to manufacture fireworks or devices listed under sub. (1) (e), (f) or (i) to (n) to a person  
13 who complies with the rules of the department promulgated under par. (e). The  
14 department may not issue a license to a person who does not comply with the rules  
15 promulgated under par. (e). The department may revoke a license under this  
16 subsection for the refusal to permit an inspection at reasonable times by the  
17 department or for a continuing violation of the rules promulgated under par. (e).

18 (e) The department of industry, labor and human relations shall promulgate  
19 rules to establish safety standards for the manufacture in this state of fireworks and  
20 devices listed under sub. (1) (e), (f) or (i) to (n). ~~The rules may not take effect before~~  
21 July 1, 1985 department of industry, labor and human relations shall conduct a  
22 public hearing at least once every 3 years to review whether the rules promulgated  
23 under this subsection need to be amended.

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

4 **SECTION 12.** 167.10 (8) (b) of the statutes is amended to read:

5 167.10 (8) (b) ~~Fireworks~~ Except as provided in s. 968.20 (4), fireworks stored,  
6 handled, sold, possessed or used by a person who violates this section, an ordinance  
7 adopted under sub. (5) or a court order under par. (a) ~~shall~~ may be seized.—The  
8 ~~fireworks~~ and held as evidence of the violation. Fireworks that are the subject of a  
9 violation of this section, an ordinance adopted under sub. (5) or a court order under  
10 par. (a) shall be destroyed after conviction for a violation, and otherwise. Fireworks  
11 that are seized as evidence of a violation for which no conviction results shall be  
12 returned to the owner.

13 **SECTION 13.** 167.10 (8m) of the statutes is created to read:

14 167.10 (8m) RULES. The department of industry, labor and human relations  
15 shall promulgate rules to establish safety standards for the storage, use, sale at retail  
16 and wholesale, and import and distribution of fireworks and any device under sub.  
17 (1) (i) to (n). The department of industry, labor and human relations shall conduct  
18 a public hearing at least once every 3 years to review whether the rules promulgated  
19 under this subsection need to be amended.

20 **SECTION 14. Initial applicability.**

21 (1) FIREWORKS SEIZURE AND DESTRUCTION. The treatment of section 167.10 (8)  
22 (b) of the statutes first applies to any fireworks seized for a violation committed on  
23 the effective date of this subsection.

24 (END)