

1999 SENATE BILL 338

January 25, 2000 – Introduced by Senators WIRCH, BRESKE, DECKER, ROESSLER, PANZER, HUELSMAN, FITZGERALD, ROBSON, GEORGE and DARLING, cosponsored by Representatives JENSEN, RHOADES, SUDER, KESTELL, PETTIS, DUFF, LA FAVE, ALBERS, SYKORA, GROTHMAN, OWENS, UNDERHEIM, GARD, SERATTI, SCHOOFF, KEDZIE, RYBA, GRONEMUS, POCAN, KLUSMAN and SKINDRUD. Referred to Economic Development, Housing and Government Operations.

1 **AN ACT to renumber and amend** 167.10 (2); **to amend** 167.10 (3) (bm), 167.10
 2 (4), 167.10 (8) (a) and 167.10 (9) (b); and **to create** 167.10 (2) (bm) and 167.10
 3 (3) (b) 8. of the statutes; **relating to:** the sale of fireworks to nonresidents and
 4 shipping of fireworks.

Analysis by the Legislative Reference Bureau

Current law regulates the sale, use and possession of certain fireworks. With limited exceptions, current law prohibits the sale of regulated fireworks to any person who does not hold a fireworks user's permit. One exception in current law authorizes a resident wholesaler to sell regulated fireworks "to a person outside of this state". In *State v. Victory Fireworks, Inc.*, Nos. 99-0243 to 99-0251, slip op. (Wis. Ct. App. Sept. 30, 1999), the court of appeals held that this exception only permits a sale to a person who is physically located outside of this state. Under current law, if a resident wholesaler sells fireworks under this exception, the resident wholesaler must package and ship the fireworks in accordance with applicable state and federal laws and must ship the fireworks by common, contract or private motor carrier.

This bill reverses *State v. Victory Fireworks, Inc.* Under this bill, a resident wholesaler may sell regulated fireworks to any nonresident person if the fireworks are for use outside of this state. Under the bill, a nonresident person may still purchase fireworks for use within this state if the nonresident person meets the requirements for use and possession in current law.

The bill also changes the shipping and transport requirements for fireworks. Under the bill, fireworks that are purchased by a nonresident person for use outside

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of this state must be transported by the nonresident person or shipped by the resident wholesaler to a location outside of this state. If the fireworks are transported by the nonresident person, the bill authorizes the nonresident person to stop in any city, town or village for up to 12 hours while en route to the out-of-state destination. This authorization is similar to an authorization in current law that applies to a person who is transporting fireworks to a permitted location within this state. In addition, the bill repeals the requirement that a resident wholesaler must use a common, contract or private motor carrier to ship fireworks. Under the bill, if fireworks are shipped by a resident wholesaler, the resident wholesaler must follow all applicable state and federal laws.

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

1 **SECTION 1.** 167.10 (2) of the statutes is renumbered 167.10 (2) (am) and
2 amended to read:

3 167.10 (2) (am) *Generally.* No person may sell or possess with intent to sell
4 fireworks, except to any of the following:

- 5 1. ~~To a~~ A person holding a permit under sub. (3) (c);
6 2. ~~To a~~ A city, village or town;
7 3. ~~For~~ A person for a purpose specified under sub. (3) (b) 2. to 6.

8 **SECTION 2.** 167.10 (2) (bm) of the statutes is created to read:

9 167.10 (2) (bm) *Exception; sale by resident wholesaler or jobber.* Paragraph
10 (am) does not prohibit a resident wholesaler or resident jobber from selling fireworks
11 to a nonresident person for use outside of this state.

12 **SECTION 3.** 167.10 (3) (b) 8. of the statutes is created to read:

13 167.10 (3) (b) 8. Except as provided in par. (bm), the possession of fireworks by
14 a nonresident person in any city, town or village if the nonresident person intends
15 to use the fireworks outside of this state and is transporting the fireworks to a
16 location outside of this state.

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

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1 167.10 (3) (bm) Paragraph (a) applies to a person transporting fireworks under
2 par. (b) 7. or 8. if, in the course of transporting the fireworks through a city, town or
3 village, the person remains in that city, town or village for a period of at least 12
4 hours.

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

6 167.10 (4) ~~OUT-OF-STATE AND IN-STATE SHIPPING.~~ SHIPPING AND TRANSPORTING.
7 ~~This section does not prohibit a resident wholesaler or jobber from selling fireworks~~
8 ~~to a person outside of this state or to a person or group granted a permit under sub.~~
9 ~~(3) (c) 1. to 7.~~ Fireworks that are purchased by a nonresident person from a resident
10 wholesaler or jobber for use outside of this state shall be transported by the
11 nonresident person or shipped by the wholesaler or jobber to a location outside of this
12 state. A resident wholesaler or resident jobber that ships the fireworks sold under
13 ~~this subsection~~ by the wholesaler or jobber shall package and ship the fireworks in
14 accordance with applicable state and federal law ~~by, as defined in s. 194.01 (1), (2)~~
15 ~~and (11), common motor carrier, contract motor carrier or private motor carrier.~~

16 **SECTION 6.** 167.10 (8) (a) of the statutes is amended to read:

17 167.10 (8) (a) A city, village or town may petition the circuit court for an order
18 enjoining violations of sub. (2) (am), (3) or (6) or an ordinance adopted under sub. (5).

19 **SECTION 7.** 167.10 (9) (b) of the statutes is amended to read:

20 167.10 (9) (b) A person who violates sub. (2) (am), (3) or (6) or an ordinance
21 adopted under sub. (5) shall forfeit not more than \$1,000.

22 **SECTION 8. Initial applicability.**

23 (1) This act first applies to actions for violations of section 167.10 of the statutes
24 that are pending on the effective date of this subsection.

25

(END)