

1999 DRAFTING REQUEST

Bill

Received: **11/15/1999**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **Doug Burnett**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact: **Alice O'Connor**

Alt. Drafters:

Subject: **Buildings/Safety - fireworks**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Sale of fireworks by wholesalers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rmarchan 11/16/1999	wjackson 11/17/1999	martykr 11/18/1999	_____	lrb_docadmin 11/18/1999		
	rmarchan 12/15/1999	wjackson 12/16/1999		_____			
/2	rmarchan 01/03/2000	gilfokm 01/03/2000	martykr 12/16/1999	_____	lrb_docadmin 12/16/1999	lrb_docadmin 12/20/1999	
/3			haugeca 01/03/2000	_____	lrb_docadmin 01/03/2000	lrb_docadmin 01/03/2000	

FE Sent For:

Not Needed

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/1	rmarchan 11/16/1999	wjackson 11/17/1999	martykr 11/18/1999	_____	lrb_docadmin 11/18/1999		

12 12/16 WJ
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DM 12/16

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1?	rmarchan	1 WLj 11/17	dm 11/18	JF 11/18			

FE Sent For:

<END>

Doug - Chvab's office

Fireworks request via fax

6-9170

Questions for Doug:

Rational basis for allowing wholesalers to sell at retail to non-residents but not allow retailers to sell at retail to non-residents?

~~Rational basis to allow a non-resident to purchase fireworks but not a resident?~~

Many want to allow ~~retailers~~ any person to sell to non-residents.

②

~~②~~

TCP Doug Burnett 11-15

① Authorized to talk to Alice O'Connor re: draft

② AMEND 167.10(4) to allow sale to nonresident if nonresident informs whol. / retailer that he/she is purchasing the fireworks for use outside of the state.



State Senator
Chuck Chvala
SENATE MAJORITY LEADER

FAX COVER SHEET

TO: Rob Marchant
6-5648

FROM: Doug

RE: _____

PAGES: 8 (Including Cover)

DATE: _____

NOTES

FIREWORKS INDUSTRY ISSUE

PROBLEM:

1995 Senate Bill 76 (Act 330) was signed into law on May 2, 1996. Under section 167.10(4) - Out-of-state and in-state shipping, fireworks can be sold to a "person outside of this state or group granted a permit...."

A Burnett County district attorney earlier this year charged a member of the Fireworks Association, Victory Fireworks, with multiple violations of the state statutes alleging that "a person outside of this state" means that fireworks sales must be made to persons *physically located outside of Wisconsin boundaries*. This was not the intent of the 1995 bill, which was written and passed by both houses of the legislature to allow fireworks sales to "nonresidents." A poor choice of words was apparently used in drafting the bill.

The case was dismissed at the lower court level but that decision was appealed by the district attorney's office. On September 30, 1999 the District III Court of Appeals ruled that the lower court was in error when it dismissed the case. Victory Fireworks was found guilty of selling fireworks to nonresidents within state boundaries.

AT ISSUE:

When this bill was passed in 1995-1996 the "legislative intent" as outlined in testimony and issue papers was to allow Wisconsin vendors to legally sell fireworks to nonresidents. This is consistent with federal law and with the laws of the states neighboring Wisconsin.

Page three of the attached Legislative Council memo outlines what the out-of-state sales law was prior to 1995 and the changes made by the Legislature with SB 76. As you can see, the recent court decision is at odds with the legal interpretation provided to the Legislature by Mr. Dyke. In fact, the court decision essentially takes us back to what the law was before Act 330 was enacted and that makes very little sense.

Many parties were involved in developing the compromise language that eventually passed. *These include:*

- Wisconsin Chiefs of Police Association
- Wisconsin State Patrol
- Wisconsin Towns Association
- Many individual Fire Chiefs
- Wisconsin Merchants Federation
- City of Madison
- Wisconsin Alliance of Cities
- City of Milwaukee
- IBA of Wisconsin
- The League of Municipalities

ACTION REQUEST:

The Wisconsin Fireworks Association is disappointed in the upper court decision and wishes to clarify once and for all what the legislative intent was in 1995.

We are urging your support of a language change to Section 167.10(4) of the statutes to clarify that the law allows the sale of fireworks to a "nonresident" rather than "a person outside of this state." All other applicable local, state and federal laws will still apply.



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

DATE: January 12, 1996
TO: SENATOR SCOTT FITZGERALD, CHAIRPERSON, SENATE COMMITTEE
ON BUSINESS, ECONOMIC DEVELOPMENT AND URBAN AFFAIRS
FROM: Don Dyke, Senior Staff Attorney
SUBJECT: Senate Substitute Amendment __ (LRBs0174/4) to 1995 Senate Bill 76,
Relating to Changes in the Laws Regulating Fireworks

This memorandum, prepared at your request, describes the provisions of the above-captioned Substitute Amendment and summarizes the changes made by the Substitute Amendment to the original proposal.

A. SUBSTITUTE AMENDMENT (LRBs0174/4)

1. Definition of Fireworks

a. Current Law

Current law defines "fireworks" as "anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use" [s. 167.10 (1) (intro.), Stats.]. Certain devices are expressly excluded from the definition of fireworks, including certain sparklers and other devices that emit sparks or smoke or make noise [s. 167.10 (1) (a) to (n), Stats.]. The devices that fall within the definition of "fireworks" are subject to state and local regulation under s. 167.10, Stats. Devices that are excluded from the definition of "fireworks" generally are not subject to state regulation under s. 167.10 and generally are not subject to local regulation under s. 167.10, unless defined as a firework by a city, village, town or county under s. 167.10 (5) (a) 1., Stats.

b. Substitute Amendment

The Substitute Amendment retains current law regarding the general definition of fireworks, but modifies the descriptions of certain devices that are excluded from the definition of fireworks. In general, the revised descriptions substitute more generic and, therefore, presumably broader descriptions of the affected devices. The revised descriptions of what is not

- 2 -

included within the definition of fireworks include the following devices: sparklers; fuseless devices designed to produce audible or visible effects, or both (e.g., "snaps"); small smoke producing devices that produce audible or visible effects, or both (e.g., "witches' cauldrons"); and cylindrical and cone fountains that are classified under federal regulation as a Division 1.4 Explosive. A Division 1.4 Explosive:

[C]onsists of explosives that present a minor explosion hazard. The explosive effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire must not cause virtually instantaneous explosion of almost the entire contents of the package [49 C.F.R. s. 173.50 (b) (4)].

2. Local Regulation of Possession of Fireworks

a. Current Law

Current law generally prohibits a person from possessing or using fireworks without a user's permit from the city, village or town in which the possession or use is to occur [s. 167.10 (3) (a), Stats.]. User's permits may be issued to: a public authority; a fair association; an amusement park; a park board; a civic organization; a group of resident or nonresident individuals; and an agricultural producer for the protection of crops from predatory birds or animals [s. 167.10 (3) (c), Stats.].

Current law authorizes a city, village, town or county to enact an ordinance, among other things, prohibiting or regulating the sale, possession or use of fireworks [s. 167.10 (5) (a), Stats.]. A local ordinance may not be less restrictive in its coverage, prohibition or regulation than state law regulating fireworks but may be more restrictive than state law.

b. Substitute Amendment

The Substitute Amendment:

(1) Exempts from the user's permit requirement 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. However, the user's permit requirement applies if, in the course of transporting fireworks through a city, town or village, the person remains in that city, town or village for a period of at least 12 hours.

(2) Prohibits a city, village, town or county from enacting 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.

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3. Sale of Fireworks by Wholesalers, Dealers or Jobbers

a. Current Law

Current law provides that the state statute regulating fireworks does not prohibit a resident wholesaler, dealer or jobber from selling fireworks:

(1) At wholesale, if the wholesaler, dealer or jobber ships or delivers the fireworks outside of the state in sealed opaque containers by common motor carrier, contract motor carrier or private motor carrier engaged in the business of shipping or delivering property; or

(2) To a person or group who has been granted a user's permit by a city, village or town [s. 167.10 (4), Stats.].

The above provision and its predecessor have been interpreted by the Wisconsin Court of Appeals as:

(1) Requiring the wholesaler to ship or deliver the fireworks outside the state when fireworks are sold to nonresidents (i.e., the nonresident may not take delivery of the fireworks at the wholesale outlet).

(2) Prohibiting alleged wholesale sales to nonresidents that in practice are retail sales. In one case, the Court of Appeals upheld a permanent injunction setting a \$500 minimum for a sale to be a wholesale sale. [See *Cornellier Fireworks Co. v. St. Croix County*, 119 Wis. 2d 44, 349 N.W. 2d 721 (Ct. App. 1984), and *State v. Seigel*, 163 Wis. 2d 871, 472 N.W. 2d 584 (Ct. App. 1991).]

b. Substitute Amendment

The Substitute Amendment:

(1) Deletes reference to "dealer" (it is apparently considered redundant).

(2) Allows a resident wholesaler or jobber to sell fireworks at retail, in addition to wholesale.

(3) Removes the requirement that when a wholesaler sells fireworks to a person who does not have a user's permit, the wholesaler must ship or deliver the fireworks outside the state.

(4) Removes from the current requirement that when a wholesaler ships or delivers fireworks by means of a private motor carrier, the private motor carrier must be engaged in the business of shipping or delivering the property (i.e., the shipping or delivering would be allowed by a private motor carrier, whether or not engaged in the business of shipping property). ["Private motor carrier" is defined in s. 194.01 (11), Stats., as, generally, any person, except a common or contract motor carrier, engaged in the transportation of property by motor vehicle other than automobile.]

4. Storage of Fireworks Near Public Assemblages or Gasoline or Volatile Liquids

a. Current Law

Current law prohibits a person from storing fireworks within 50 feet of a public assemblage or a place where gasoline or volatile liquid is sold in quantities exceeding one gallon [s. 167.10 (6) (e), Stats.].

b. Substitute Amendment

The Substitute Amendment specifies that the 50-foot requirement applies to places where gasoline or volatile liquid is dispensed, rather than sold.

5. Disposal of Seized Fireworks

a. Current Law

Current law requires the seizure of fireworks stored, handled, sold or used by a person who violates the state statute regulating fireworks, a local ordinance regulating fireworks or a court order enjoining violation of state law or local ordinance. Further, the fireworks are required to be destroyed if there is a conviction; otherwise, the fireworks are returned to the owner [s. 167.10 (8) (b), Stats.].

b. Substitute Amendment

The Substitute Amendment authorizes, rather than requires, the seizure of fireworks that are sold, possessed or used by a person who violates state or local fireworks law. Further, the Substitute Amendment provides that only those fireworks that are the subject of a violation of state or local fireworks law may be destroyed after a conviction for a violation (the decision to destroy those fireworks is optional, not mandatory). The Substitute Amendment provides that fireworks that are seized as evidence of a violation for which a conviction results must be returned to the owner in the same condition as when seized, to the extent practicable, unless the fireworks pose a danger to life or property.

6. License Revocation for Failure to Permit Inspection

a. Current Law

Current law authorizes the Department of Industry, Labor and Human Relations (DILHR) to inspect at reasonable times the premises of a personal license to manufacture fireworks [s. 167.10 (6m) (f), Stats.]. The DILHR is authorized to revoke a manufacturer's license for refusal to permit an inspection by the Department [s. 167.10 (6m) (d), Stats.].

b. Substitute Amendment

The Substitute Amendment limits DILHR license revocation authority for refusal to permit an inspection to failure to permit an inspection at reasonable times.

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B. CHANGES MADE BY THE SUBSTITUTE AMENDMENT

Following is a summary of changes made by the Substitute Amendment to the original proposal:

1. The Substitute Amendment restores the following provisions relating to local regulation of fireworks that were deleted in the original proposal:

a. The current requirement that a person obtain a user's permit from a city, village or town in order to possess fireworks;

b. The current authority of a city, village, town or county to prohibit or regulate the possession of fireworks; and

c. The current authority of a city, village, town or county to define and, therefore, regulate under s. 167.10, Stats., the various fireworks-related devices that are not included within the statutory definition of "fireworks."

2. The Substitute Amendment permits the possession of fireworks, without a user's permit and for up to 12 hours, in a city, village or town while transporting the fireworks to a city, village or town where the possession of the fireworks is permitted.

3. The Substitute Amendment deletes the provision in the original proposal that prohibits a local fireworks ordinance from covering, prohibiting or regulating the sale or storage of fireworks by wholesalers, importers, jobbers, dealers or manufacturers of fireworks who are doing business in Wisconsin on the effective date of the proposal.

4. The Substitute Amendment removes the requirement of current law that when a wholesaler sells fireworks to a person who does not have a user's permit, the wholesaler must ship or deliver the fireworks outside the state.

5. The Substitute Amendment deletes the provision in the original proposal that reduced from 50 to 25 feet the minimum required distance for storing fireworks near public assemblages, gasoline or volatile liquids.

6. The Substitute Amendment revises the original proposal by providing that fireworks that are the subject of a violation of state or local fireworks law may be, but are not required to be, destroyed after conviction for violation.

7. The Substitute Amendment deletes the following rule-related provisions contained in the original proposal:

a. The requirement that DILHR conduct a public hearing at least once every three years to review whether the rules on safety standards for the manufacture of fireworks need to be amended.

b. The requirement that DILHR promulgate rules to establish safety standards for the storage, use, sale at retail and wholesale and import and distribution of fireworks and that

- 6 -

DILHR conduct a public hearing at least once every three years to review whether such rules need to be amended.

DD:jmm:ky:rj;lsh

**PUBLISHED OPINION
COURT OF APPEALS
DECISION**

DATED AND FILED

September 30, 1999

Marilyn L. Graves

Clerk, Court of Appeals

of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and Rule 809.62, Stats.

**Nos. 99-0243, 99-0244, 99-0245, 99-0246,
99-0247, 99-0248, 99-0249, 99-0250,
99-0251 99-0243, 99-0244, 99-0245, 99-0246,
99-0247, 99-0248, 99-0249, 99-0250,**

STATE OF WISCONSIN IN COURT OF APPEALS

DISTRICT III

State of Wisconsin,

Plaintiff-Appellant,

v.

Victory Fireworks, Inc.,

Defendant-Respondent.

APPEAL from an order of the circuit court for Burnett County: EUGENE D. HARRINGTON, Judge
Reversed and cause remanded with directions.

Before Cane, C.J., Hoover, P.J., and Gordon Myse, Reserve Judge.

MYSE, R.J. The State of Wisconsin appeals an order dismissing two complaints charging Victory Fireworks, Inc., with multiple counts of violating § 167.10, Stats., which restricts the sale of fireworks. The State contends that the circuit court erred when it concluded that § 167.10(4) allows Victory to sell proscribed fireworks to nonresidents within state boundaries. Because we conclude that § 167.10(4) does not authorize the sale of restricted fireworks to nonresidents within this state, the order is reversed.¹

The facts giving rise to this appeal are essentially undisputed. Victory sold fireworks, restricted under § 167.10(1), Stats., to nonresidents within the boundaries of the State of Wisconsin. A sales clerk would request proof of residence and, after verifying the prospective purchasers were not Wisconsin residents, have them sign a document entitled, "Out of State Fireworks Purchase Contract and Straight Bill of Lading." This document claimed, among other things, that the title to the fireworks would pass only after the purchased items reached "a destination outside the State of Wisconsin." Purchasers were thereafter allowed to buy whatever restricted fireworks they desired. The fireworks would be packaged in a sealed bag or box with a label reflecting, among other things, that it was illegal to open and use the fireworks in the State of Wisconsin.

The circuit court dismissed the multiple charges against Victory based upon its conclusion that § 167.10(4), Stats., permitted the sale of restricted fireworks to nonresidents within Wisconsin's boundaries.

Section 167.10, Stats., entitled "Regulation of fireworks," provides, in relevant part:

(2) SALE. No person may sell or possess with intent to sell fireworks, except [persons holding appropriate permits and others not relevant here] ...

(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.

Victory does not claim that it sold restricted fireworks to valid permit holders or any other authorized purchaser under § 167.10(2), Stats. Rather, it contends that the statutory language of subsection (4) provides an exception to the general restriction on sales under subsection (2). Specifically, Victory contends that subsection (4) allows the sale of restricted fireworks within the boundaries of Wisconsin as long as the sales are to nonresidents. Victory contends that it only sold restricted fireworks to nonresidents and properly packaged the fireworks pursuant to its sale contract, thereby conforming to the statute.

The State responds that the plain and unambiguous statutory language prohibits the sale of restricted fireworks within the state to any individual not expressly prohibited under § 167.10(2), Stats. Further, the language regarding sales to "a person outside of this state" is not synonymous with a "nonresident."

The sole issue before us is whether § 167.10(4), Stats., authorizes the sale of fireworks to

nonresidents within this state's boundaries. The construction of a statute and its application to a particular set of facts are questions of law that we review without deference to the circuit court's conclusions. *See State v. Block Iron & Supply Co.*, 183 Wis.2d 357, 363, 515 N.W.2d 332, 334 (Ct. App. 1994). The goal of statutory construction is to ascertain legislative intent, and to do so, we first examine the statute's plain meaning. *See Truttschel v. Martin*, 208 Wis.2d 361, 365, 560 N.W.2d 315, 317 (Ct. App. 1997). If the statute's meaning is plain on its face, our inquiry ends, and we will apply it to the facts of the case. *See id.*

We conclude that the language in § 167.10 (4), Stats., regarding sales to "a person outside of this state" means exactly what it provides: that the purchaser must be outside of the boundaries of Wisconsin. Had the legislature desired to permit the sale of restricted fireworks to nonresidents within this state it could have used the term "nonresident," a term that is utilized in other statutes with great frequency. Significantly, the legislature used the term "resident" in subsection (4) to refer to the regulated sellers; there is no apparent reason that the legislature would not have used the term "nonresident" had that term embodied the its intent.

On the contrary, the legislature intentionally chose to only permit sales to purchasers who were physically outside of this state's boundaries. Section 167.10(4), Stats., is entitled "Out-of-state and in-state shipping" and identifies the requirements for shipping fireworks sold to authorized purchasers. Subsection (4)'s reference to purchasers outside of this state merely acknowledges that subsection (2) does not prohibit the sale of restricted fireworks to persons outside of this state. Therefore, subsection (4) is not an exception to the general prohibition on fireworks sales in this state, but instead merely identifies the shipping requirements for permissible purchasers.

We agree with the State that Victory's position does not give effect to the clear statutory language. Victory also contends that the statutory requirements for shipping fireworks supports its argument because it claims that its customers fit the statutory definitions as appropriate carriers. However, we need not consider whether Victory's customers could be considered appropriate carriers of restricted fireworks because this issue does not affect the legality of the sale. It is Victory's illegal sale of restricted fireworks, not its shipping practices, that gives rise to the instant forfeiture action.

Victory further contends that the Uniform Commercial Code permits the parties to agree on the time and manner in which title to the fireworks passes. *See* § 402.401, Stats. Under the purchase contract required by Victory, the title to the fireworks passes only when it reaches its out-of-state destination. Therefore, according to Victory's interpretation of the U.C.C., it has not conducted a "sale" within the state's boundaries. However, without discussing the passage of title, the reality remains that Victory gave physical possession of restricted fireworks to individuals within the boundaries of this state. It is the harm caused by possessing restricted fireworks in this state that the legislature seeks to control by restricting the sales of certain fireworks in this state.

Furthermore, the U.C.C.'s own limiting provisions provide that the U.C.C. does not "impair" any other statutes regulating sales.² We have already concluded that § 167.10, Stats., specifically regulates the sale of fireworks within this state for the purpose of controlling the possession of fireworks within this state. If we interpreted the U.C.C. as allowing Victory to manipulate its point of sale by defining the passage of title to only occur after a purchaser leaves this state's boundaries, the U.C.C. would significantly impair the express intent of § 167.10. Neither the U.C.C. provisions nor Victory's purchase contract may impair that section's mandate.

We therefore hold that the language of § 167.10(4), Stats., clearly indicates that Victory acted illegally in selling restricted fireworks to nonresidents within this state. Even if we were to look beyond the plain language of the statute itself, however, there is additional evidence that the legislature intended to preclude sales within this state except under the circumstances enumerated under subsection (2).

Generally, we presume that the legislature acts with full knowledge of existing statutes and how the courts have interpreted these statutes. *See C.L. v. Edson*, 140 Wis.2d 168, 181, 409 N.W.2d 417, 421 (Ct. App. 1987). Moreover, "[w]here the legislature has made amendments to the statutory section in question and has not corrected the court's interpretation, the presumption of adoption or ratification is strengthened." *York v. National Continental Ins. Co.*, 158 Wis.2d 486, 497, 463 N.W.2d 364, 369 (Ct. App. 1990). This court came to the identical conclusion when it interpreted the 1981-82 version³ of the current statute in *Cornellier Fireworks Co. v. St. Croix County*, 119 Wis.2d 44, 349 N.W.2d 721 (Ct. App. 1984). In that case, we stated:

Subsection (4), when read in the context of the purpose and scheme of sec. 167.10, does not provide an exception to the restriction on fireworks sale and use in Wisconsin. It simply clarifies the *statute's prohibition as applying only to sales where transfer of possession from seller to purchaser takes place in Wisconsin*. The statute prohibits selling fireworks in Wisconsin to nonpermit holders. Subsection (4) does not expressly exempt nonresidents from the prohibition and, since it would be inconsistent with the aim of sec. 167.10, we will not infer such an exemption.

Id. at 46-47, 349 N.W.2d at 723 (emphasis added). Although some of the statutory language at issue in *Cornellier* differs from today's section,⁴ we conclude that the differences do not indicate a change in the legislature's intent to limit purchasers to outside this state's boundaries.

The obvious legislative intent of § 167.10, Stats., is to restrict the possession and use of dangerous fireworks in the state of Wisconsin. The statute seeks to avoid injuries from dangerous fireworks to persons within this state without regard to residency. Allowing nonresidents to purchase restricted fireworks in this state would necessarily involve possession of restricted fireworks in this state and would therefore be inconsistent with the legislature's intent.

Moreover, the legislative scheme also indicates that § 167.10(4), was not intended to be a broad exception to the general prohibition on sales because that subsection addresses shipping requirements. The restriction on sales in subsection (2) identifies which sales are permitted while the shipping requirements identified in subsection (4) deal with how permitted sales must be shipped. It is inconsistent with the statutory scheme to find a large exception to the general prohibition on the sale of fireworks in this state in the subsection regulating shipping.

Based on our conclusion that the clear language of § 167.10(4), Stats., permits an individual to buy restricted fireworks within the state only where that person possesses a permit, or under the other identified exceptions enumerated in § 167.10(2), the order dismissing the complaints is reversed and the matter is remanded to the circuit court for further proceedings consistent with this opinion.

By the Court.-Order reversed and cause remanded with directions.

Recommended for publication in the official reports.

1 Pursuant to this court's July 20, 1999, order this case is being decided by a 3-judge panel.

2 Section 402.102, Stats., of the U.C.C. states, in relevant part, that the U.C.C. does not "impair or repeal any statute regulating sales to consumers ... or other specified classes of buyers."

3 Section 167.10(4), Stats., 1981-82, provides: "Nothing in this section shall be construed to prohibit any resident wholesaler, dealer or jobber from selling fireworks ... at wholesale, but only when the same are shipped or delivered directly outside of the state of Wisconsin"

4 The relevant language of the current version of § 167.10(4), Stats., requires that the sale be to "a person outside of this state," while § 167.10(4), Stats., 1981-82, requires that the fireworks be "shipped or delivered directly outside of the state" The current version also differs in that it does not require the out-of-state purchaser to be a wholesaler. The legislature's intent in both versions, however, is manifested by the use of language referring to the boundaries of the state.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-39602

RJM

WL
Rmk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

NOTE

99-
Nos. 99-0243 to 0251, slip op. (Wis. Ct.
App. Sept. 30, 1999)

1 AN ACT *sen. act.*; relating to: the sale of fireworks to non residents.

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.*, ~~1999 Wis. App. LEXIS 710~~, the court of appeals held that this exception only permits a sale to a person who is physically located outside of this state.

This bill reverses this decision and clarifies the exception. Under this bill, a resident wholesaler may sell regulated fireworks to any nonresident person. This bill does not affect current law regarding the possession and use of regulated fireworks.

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

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

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

1
2

1. To a A person holding a permit under sub. (3) (c); ~~or~~.

2. To a A city, village or town; ~~or~~.

3. For A person for a purpose specified under sub. (3) (b) 2. to 6.

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

5. 167.10 (2) (bm) *Exception; sale by resident wholesaler or jobber.* Paragraph
6. (am) does not prohibit a resident wholesaler or resident jobber from selling fireworks
7. to a nonresident person.

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

9. 167.10 (4) OUT-OF-STATE AND IN-STATE SHIPPING. ~~This section does not prohibit~~
10. ~~a resident wholesaler or jobber from selling fireworks to a person outside of this state~~
11. ~~or to a person or group granted a permit under sub. (3) (e) 1. to 7.~~ A resident
12. wholesaler or resident jobber that ships the fireworks sold under this subsection by
13. the wholesaler or jobber shall package and ship the fireworks in accordance with
14. applicable state and federal law ^{plain space} by, as defined in s. 194.01 (1), (2) and (11), In
15. addition, the wholesaler or jobber shall ship the fireworks by common motor carrier,
16. contract motor carrier or private motor carrier, as defined in s. 194.01 (1), (2) and (11),
17. respectively.

18. SECTION 4. 167.10 (8) (a) of the statutes is amended to read:

19. 167.10 (8) (a) A city, village or town may petition the circuit court for an order
20. enjoining violations of sub. (2) (am), (3) or (6) or an ordinance adopted under sub. (5).

21. SECTION 5. 167.10 (9) (b) of the statutes is amended to read:

22. 167.10 (9) (b) A person who violates sub. (2) (am), (3) or (6) or an ordinance
23. adopted under sub. (5) shall forfeit not more than \$1,000.

24. SECTION 6. Initial applicability.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3960/1dn

RJM:.....

WJ

← SALUTATION
Senator Chvala:

1. This bill reverses *State v. Victory Fireworks, Inc.*, 1999 Wisc. App. LEXIS 1100, which interpreted the wholesaler exception currently in s. 167.10 (4), stats. The current structure of s. 167.10, stats., contributed to the court's interpretation of the wholesaler exception. In order to make it clear that this bill reverses that decision, I have made a few structural changes to s. 167.10, stats. Please let me know if you do not approve.

2. As drafted, this bill applies to any action for a violation of s. 167.10, stats., that is pending on the effective date of the bill. However, if you do not ^{intend to} apply the bill to pending actions, you may want to consider adding a limitation to the wholesaler exception in proposed s. 167.10 (2) (bm), stats., to allow a sale only if the purchaser informs the wholesaler that the fireworks are for use outside of this state. Another option is to require the wholesaler to inform the purchaser that Wisconsin law may prohibit the purchaser from using the fireworks in this state. Please let me know if you do not intend to apply this bill to pending actions or if you desire any other changes to the bill.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3960/1dn
RJM:wlj:km

November 18, 1999

Senator Chvala:

1. This bill reverses *State v. Victory Fireworks, Inc.*, 1999 Wisc. App. LEXIS 1100, which interpreted the wholesaler exception currently in s. 167.10 (4), stats. The current structure of s. 167.10, stats., contributed to the court's interpretation of the wholesaler exception. In order to make it clear that this bill reverses that decision, I have made a few structural changes to s. 167.10, stats. Please let me know if you do not approve.

2. As drafted, this bill applies to any action for a violation of s. 167.10, stats., that is pending on the effective date of the bill. However, if you do not intend to apply the bill to pending actions, you may want to consider adding a limitation to the wholesaler exception in proposed s. 167.10 (2) (bm), stats., to allow a sale only if the purchaser informs the wholesaler that the fireworks are for use outside of this state. Another option is to require the wholesaler to inform the purchaser that Wisconsin law may prohibit the purchaser from using the fireworks in this state. Please let me know if you do not intend to apply this bill to pending actions or if you desire any other changes to the bill.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us

DRAFT -- NOT FOR DISTRIBUTION

The following is a brief explanation of the suggested changes to Wis. Stat. 167.10 to clarify the intent of the 1996 legislation in view of the recent Court of Appeals Decision:

Paragraph (2)(c): language added to make it clear that the nonresident sales are permissible; all of the permissible statutory exceptions are therefore referred to in the same paragraph for consistency as well.

Paragraph (3)(b)7: language added to indicate that there is also a transportation exception for nonresidents who purchase fireworks.

Paragraph (4): modified to address the conflict between the prior intended change and the interpretation given that change by the Court of Appeals. Sales to nonresidents are permitted as is transportation by nonresidents so long as the fireworks are taken out of this state. Use is not authorized except for persons having a permit. Further, the shipping language referring to specific types of carriers is omitted; it is actually redundant and implies that other types of shipping would be impermissible, which it is not. Also, the distinctions between types of carriers (example being a private motor carrier can be one driving a small pickup truck but not a car) is confusing.

DRAFT -- NOT FOR DISTRIBUTION

The following are the proposed language changes to Wis. Stat. 167.10 to clarify the intent of the 1996 legislation in view of the recent Court of Appeals Decision:

Paragraph (2)(c) *add: or paragraph (4).*

Paragraph (3)(b)7 *add: or while a nonresident is transporting fireworks pursuant to paragraph (4).* ✓ *Will be (3)(b) 8, except as prov. in (b)(m)*

Paragraph (4): *add to title SALES TO NON RESIDENTS AND change to nonresident person, add A nonresident who takes possession of fireworks in this state shall transport same out of this state unless said person has a permit under sub. (3)(c) 1. to 7., and strike by, as defined in s. 194.01 (1), (2) and (11), common motor carrier, contract motor carrier or private motor carrier.*

Covered currently by 167.10 (3) (a)

Covered currently by 167.10 (3) (a)

12-14-99

Mtg with Alice O'Connor + fireworks
personnel. Need to clarify
ability of nonresident to take possession of a
transport fireworks purchased by use outside
of state AND ability to stop while driving
back to home state/out of state location.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3960/4
RJM:wlj:km

12-22-99

RM NR

DATE

1999 BILL

Reger

Reger

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

INSERT ANALYSIS

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.

This bill reverses this decision and clarifies the exception. Under this bill, a resident wholesaler may sell regulated fireworks to any nonresident person. This bill does not affect current law regarding the possession and use of regulated fireworks.

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

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

~~SHIPPING AND TRANSPORTING~~
BILL

fireworks that are purchased by a nonresident person from
a resident wholesaler or jobber for use outside of this state shall
be transported by the nonresident person or shipped by the

wholesaler or
jobber to
a location
outside of
this state

1 167.10 (2) (am) Generally. No person may sell or possess with intent to sell
2 fireworks, except to any of the following:

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

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

7 167.10 (2) (bm) Exception; sale by resident wholesaler or jobber. Paragraph
8 (am) does not prohibit a resident wholesaler or resident jobber from selling fireworks
9 to a nonresident person. for use outside of this state

INSERT
2-9 ✓

10 SECTION 3. 167.10 (4) of the statutes is amended to read: (C)

11 SHIP 167.10 (4) ~~OUT-OF-STATE AND IN-STATE SHIPPING~~ SHIPPING AND TRANSPORTING. This section does not prohibit
12 a resident wholesaler or jobber from selling fireworks to a person outside of this state
13 or to a person or group granted a permit under sub. (3) (c) 1. to 7. A resident
14 wholesaler or resident jobber that ships the fireworks sold under this subsection by
15 the wholesaler or jobber shall package and ship the fireworks in accordance with
16 applicable state and federal law by, as defined in s. 194.01 (1), (2) and (11). In
17 ~~addition, the wholesaler or jobber shall ship the fireworks by common motor carrier,~~
18 ~~contract motor carrier or private motor carrier, as defined in s. 194.01 (1), (2) and (11),~~
19 ~~respectively.~~

20 SECTION 4. 167.10 (8) (a) of the statutes is amended to read:

21 167.10 (8) (a) A city, village or town may petition the circuit court for an order
22 enjoining violations of sub. (2) (am), (3) or (6) or an ordinance adopted under sub. (5).

23 SECTION 5. 167.10 (9) (b) of the statutes is amended to read:

24 167.10 (9) (b) A person who violates sub. (2) (am), (3) or (6) or an ordinance
25 adopted under sub. (5) shall forfeit not more than \$1,000.

INSERT ANALYSIS

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.* ~~and clarifies the exception~~. 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 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 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 twelve hours while en route to the out-of-state destination. The bill ~~also~~ 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.

INSERT 2-9

SECTION ~~4~~⁵. 167.10 (3) (b) 8. ✓ of the statutes is created to read:

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

SECTION ~~4~~⁵. 167.10 (3) (bm) ✓ of the statutes is amended to read:

167.10 (3) (bm) Paragraph (a) applies to a person transporting fireworks under par. (b) 7. or 8. if, in the course of transporting the fireworks through a city, town or

Person

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,

village, the person remains in that city, town or village for a period of at least 12 hours.

(ad ms)

NOTE

Senator Chevala:

Attached is ~~the~~ a redraft of the ~~bill~~ bill relating to the sale of fireworks to non-residents. I redrafted this bill based upon the instructions of Alice O'Connor. Please call if you have any questions. ~~State Representative~~
~~State Representative~~

[name: RJM]

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3960/2dn
RJM:wlj:km

December 16, 1999

Senator Chvala:

Attached is a redraft of the bill relating to the sale of fireworks to nonresidents. I redrafted this bill based upon the instructions of Alice O'Connor. Please call if you have any questions.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 11/05/1999

To: Senator Moore

Relating to LRB drafting number: LRB-3560

Topic

Delete 2-year time limit for each W-2 employment position

Subject(s)

Public Assistance - Wis works

1. **JACKET** the draft for introduction Moore

in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Ivy G. Sager-Rosenthal, Legislative Attorney
Telephone: (608) 261-4455

1-3-00

Ty Sen. Chvala's staff. OK to copy
sen. Kirch on draft.

TODAY

1999 BILL

stays
D-NOTE
EMNR

D-NOTE

Men Cat

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

BILL

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; ~~or,~~
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:

BILL

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.

Prop w/ state

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)

NOTE

3960/3

RJM:Kmg:

Senator Chvala:

This version of the bill corrects an ~~actual~~
error contained in the previous version. See the last
sentence of s. 147.10 (4), as affected by the bill. I
apologize for any inconvenience. Please call if you
have any questions.

[Name: RJM]

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3960/3dn
RJM:kmg:ch

January 3, 2000

Senator Chvala:

This version of the bill corrects an error contained in the previous version. See the last sentence of s. 167.10 (4), as affected by the bill. I apologize for any inconvenience. Please call if you have any questions.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us