

2001 DRAFTING REQUEST

Bill

Received: 11/07/2000

Received By: **rmarchan**

Wanted: 11/26/2000

Identical to LRB:

For: **Legislative Council - IND**

By/Representing: **Mary Matthias**

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

Drafter: **rmarchan**

May Contact:

Alt. Drafters:

Subject: **Buildings/Safety - fireworks**

Extra Copies: **Rep. Steinbrink**

Pre Topic:

No specific pre topic given

Topic:

Fireworks

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>
/?	rmarchan 11/16/2000	jdye 11/20/2000		_____			Local
/1	rmarchan 12/27/2000	jdye 12/27/2000	martykr 11/20/2000	_____	lrb docadmin 11/20/2000		Local
/2	rmarchan 01/05/2001	jdye 01/07/2001	pgreensl 01/02/2001	_____	lrb docadmin 01/02/2001		Local
/3			martykr 01/10/2001	_____	lrb docadmin 01/10/2001	lrb docadmin 01/19/2001	

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/2		<i>B 1/7 jld</i>	pgreensl 01/02/2001	_____	lrb_docadmin 01/02/2001		

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RM 1/10 *RS 1/10*

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FE Sent For:

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Marchant, Robert

From: Matthias, Mary
Sent: Wednesday, October 25, 2000 4:28 PM
To: Marchant, Robert

Rep. Steinbrink would like a bill drafted to strengthen law regarding the issuance of fireworks user permits--generally s. 167.10(3), stats. The items he would like included are set forth below.

- ✓ 1. Specify that a fireworks users permit may be issued only by a municipal official or employe directly to the individual receiving the permit. Specify that a municipality may not authorize a fireworks retailer to act as its agent in the issuance or distribution of fireworks users permits.
- ✓ 2. Require all fireworks user's permits to be signed by a municipal fire official. → ASK MES
- ✓ 3. Specify that fireworks user's permits may not be issued or distributed or in any other way provided to any individual at any location at which fireworks are sold or stored.
- ✓ 4. Authorize a district attorney to petition the court for an order enjoining certain fireworks law violations occurring within the county. (s. 167.10(8)(a), stats.)
- ✓ 5. Specify that a fireworks retailer is liable for any damages or injuries caused by fireworks which the retailer sold to a person who did not hold a valid fireworks user permit.
- ✓ 6. Amend section 167.10 (3) (c) (6) stats, which authorizes the issuance of a fireworks users permit to "a group of resident or nonresident individuals" to specify that a permit may only be issued to one individual who is authorized to act on behalf of a group. Specify that the individual must have been a member of the group for at least six months.

2 NOTE
12 mos.

Mary Matthias
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167.10 fireworks draft

Wang @ Leg. Council

Jeff Costan in Rep. Strickland's office

Alan Kesner @ DOT

Ready to go for ~~Party~~ Mid-Nov.

**Fireworks in Wisconsin:
A Booming Business
SPET ETN: May 1, 1998**

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I. Only One Controlling Statute - Sec. 167.10

A. Defines items which are "Fireworks" - 167.10(1)

"[A]nything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include . . ."

The significant exceptions are at subs. (i) through (n)

Some exceptions include references to certain items classified as "Division 1.4 explosive, as defined in 49 CFR 173.50" (NOTE: Not all items that are Division 1.4 explosives are unregulated in Wisconsin)

Division 1.4 consists 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 CFR sec. 173.50(b)(4) (copy attached)

B. Limits Sales - 167.10(2)

Fireworks may **ONLY** be sold to persons holding **VALID** permits, to municipalities, and for other very limited specific purposes.

C. Possession and Use of Fireworks - 167.10 (3)

No possession or use of fireworks without a user's permit from an appropriate official of the municipality in which the possession or use is to occur. Although it is not specifically defined this way in the statute or any cases, it can easily be argued that this must be a **VALID** permit. (more on permits later!!)

Among other exceptions in 167.10(3)(b), there is now a "travelers' exception" (created in 1996):

Possession of fireworks is allowed "while transporting the fireworks to a city, town or village where the possession of the fireworks is authorized by permit or ordinance."

A person is no longer travelling if "the person remains in that city, town or village for a period of at least 12 hours."

D. Out-of-state-sales and in-state shipping- 167.10(4)

A "wholesaler or jobber" may sell fireworks "to a person outside of this state or to a person or group granted a permit under sub. (3) (c) 1. to 7" if they ship according to applicable laws, and ship by "common motor carrier, contract motor carrier or private motor carrier".

E. Local ordinances - 167.10(6)

A city, village, town or county may enact an more strictly limiting items defined as fireworks or prohibiting or regulating the sale, possession or use of fireworks.

F. Enforcement - 167.10(8) and (9)

Only a city, village or town may petition order enjoining violations of sec. 167.10 or local ordinances.

Fireworks may be seized and held as evidence of the violation, but only the fireworks that are the subject of a violation may be destroyed after conviction.

If fireworks are seized and no conviction results, the fireworks "shall be returned to the owner in the same condition as they were when seized to the extent practicable."

Most violations are forfeitures only.

Parents or guardians can be convicted for consenting to minors' use of fireworks.

II. Common Questions, or "Permits, Permits, Permits . . ."

A. Who can issue fireworks permits? - 167.10(3)(a)

Only the mayor of the city, president of the village or chairperson of the town in which the possession or use is to occur, or an official or employe of that municipality designated by the mayor, president or chairperson.

This duty may not be delegated to others, such as a private business owner (but note the occasional situation where a municipal official is also a business owner).

B. Who can permits be issued to? – 167.10(3)(c)

Permits may only be issued to . . . 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." In addition, subsection (h) specifies that a permit may not be issued to a minor.

C. What must a permit contain? – 167.10(3)(f)

In order to be valid, a permit must contain the name and address of the permit holder, the date on and after which fireworks may be purchased, the kind and quantity of fireworks which may be purchased, the date and location of permitted use, and other special conditions prescribed by ordinance.

D. Are there any other types of permits which might do the trick?

18 U.S.C. §§ 841-848 regulate the interstate importing, manufacturing, distributing and storing of explosive materials. 18 U.S.C. § 843 provides for a license issued by the U.S. Department of Transportation to engage in these activities. Some of the larger "legitimate" fireworks merchants might have one of these federal licenses, which obviates their need to have a local license. *City Of Wisconsin Dells V. Dells Fireworks*, 197 Wis.2d 1, 19, 539 N.W.2d 916 (Ct. App. 1995). A federal license only allows the holder to possess and use fireworks, or sell to other federal licensees. A local ordinance could require a sellers' license of federal license holders.

E. What does a permit under state law allow?

A permit can allow its holder to:

Purchase fireworks:

anywhere in the state

type and quantity must be specified in the permit

on or after the date for purchase specified in the permit

Transport those fireworks to a location specified in permit:

Remaining in a "non-permitted" city, town or village more than 12 hours means you are no longer "transporting".

If a person is not on a reasonably direct route between the location of purchase and the location of the permit, it can probably also be argued that they are not really transporting to the permitted location.

Use Fireworks:

Date and location must be specified in permit.

F. What about this stand that is "selling" permits?

It doesn't work.

Upon closer examination, fireworks stands on Wisconsin have not generally been selling the actual permits themselves. Several "organizations" (see sub. 167.10(3)(c)6.) may have obtained permits from authorized entities, and then the fireworks dealers have purported to sell "memberships" into the organization holding the fireworks permit to individuals wishing to purchase fireworks. Their argument has been that this allows the member to take advantage of the group's permit for their own individual use.

DOI objected this practice for many years. In a letter dated June 9, 1987, Assistant Attorney General Daniel A. Milan, expressed doubts about the validity of one organization's permit scheme. He argued that the intent of section 167.10 was to permit the use of fireworks by groups of people at a specific place and time if authorized by the local municipality. Commenting on one organization's practices, he stated that "this is a scheme to facilitate the sale of fireworks rather than to promote Club functions."

More recently, a court has finally decided this issue, holding that "[u]nder § 167.10(3)(c)6, STATS., the permit is issued to a group, not to the individuals that make up the group. Therefore, it is the group, W[isconsin] F[ireworks] A[ssociation], which holds the permit, not the members of the WFA." *Dells Fireworks*, 197 Wis. 2d at 20. Since the permits made clear that the individuals had no ability to exercise any control over the organization itself, they were not acting on behalf of the organization. The court went on to say that:

Except for an agricultural producer, user permits may not be issued to individuals. These requirements give the issuing municipality the ability to carefully control the use and possession of fireworks within its boundaries. If any individual who pays two dollars can obtain a permit without the municipality even knowing about it, there is little point to any of these sale and use requirements. It is clear from the WFA membership form and the undisputed circumstances of the membership purchases, that WFA is not

exercising any control over the purchase or use of fireworks by its members.

197 Wis. 2d at 21.

G. Can they sell to people from other states who are in Wisconsin?

A wholesaler or "jobber" can sell fireworks "to a person outside of this state", 167.10(4), but that language doesn't seem to provide permission to sell to other states' residents while they are in this state.

*Victory
Fireworks*

When the seller ships the fireworks they must be packaged and shipped in accordance with applicable state and federal law by, "common motor carrier, contract motor carrier or private motor carrier" (as defined at secs. 194.01 (1), (2) and (1.1)). This means the fireworks cannot be put into private automobiles for "shipment" out of state.

III. Conclusion

Contrary to appearances (note the many roadside stands in the summer), fireworks ARE a highly limited and strictly controlled commodity in Wisconsin. Confusion over specifics of this law (much of it fostered by the fireworks industry itself) and diffused expertise in the field have led to widespread misunderstanding of the law. If enforced consistently and clearly, with the cooperation of city, town and village officials, the law regarding the possession, sale and use of fireworks can be used to assure safe and happy summer celebrations.



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: March 1, 2000

TO: REPRESENTATIVE JOHN STEINBRINK

FROM: Dan Fernbach and Mary Matthias, Senior Staff Attorneys

SUBJECT: Your Questions Concerning 1999 Senate Bill 338 and 1999 Assembly Bill 685, Relating to the Sale of Fireworks to Nonresidents

In a memorandum, dated February 23, 2000, to Legislative Council Senior Staff Attorney Mary Matthias, you requested answers to 13 specific questions regarding the potential impact of 1999 Senate Bill 338 and 1999 Assembly Bill 685, companion bills that authorize the sale of fireworks to nonresidents for use outside the State of Wisconsin. This memorandum responds to your request. All references to Senate Bill 338 apply equally to Assembly Bill 685, as the bills are identical.

Question 1: *This bill has been represented as a clarification or correction of the intent of '95 SB 76 (1995 Wisconsin Act 330). In the Court of Appeals finding in State v. Victory Fireworks, did the court find that the use of the term "outside of the state" was unclear? And, if the intent of the '95 SB 76 was to allow sales to residents of other states who are currently within the state of Wisconsin for transport back to their home state, did the court find that other language commonly used in the existing statutes to designate residents of states other than Wisconsin was available and not used to state this intent in '95 SB 76?*

In *State v. Victory Fireworks, Inc.*, 602 N.W.2d 128 (Ct. App. 1999), the court of appeals determined that the meaning of the term "person outside the state," as used in s. 167.10 (4), Stats., is "plain on its face" and is not synonymous with the term "nonresident." The court explained its conclusion as follows:

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 its intent.

...

On the contrary, the legislature intentionally chose to only permit sales to purchasers who were physically outside of this state's boundaries.

Question 2: *In rendering its decision, did the court find that the state's general restriction on fireworks was intended to reduce injuries related to the use of fireworks in the state, regardless of the residency of their user? And did the court find that allowing in-state sales of these fireworks regardless of the residency of the purchaser would be inconsistent with the intent of Wisconsin's general prohibition on the sale or use of these fireworks?*

In its interpretation of s. 167.10, Stats., the court of appeals stated that s. 167.10, Stats., "seeks to avoid injuries from dangerous fireworks to persons within this state without regard to residency." The court stated that to allow nonresidents to buy restricted fireworks in Wisconsin would necessarily involve possession of restricted fireworks in the state, and would therefore be "inconsistent with the legislature's intent" to prohibit the possession and use of dangerous fireworks in Wisconsin.

Question 2b: *Does Senate Bill 338 repeal the state's general prohibition on the sale and possession of fireworks? And does Senate Bill 338 allow in-state sales of fireworks banned for use in Wisconsin to persons claiming to be from another state?*

Senate Bill 338 does not repeal the state's general prohibition and possession on the sale of fireworks contained in present s. 167.10 (2) and (3), Stats. The bill does allow the sale to nonresidents of fireworks which are generally prohibited in Wisconsin.

Question 3: *Currently, 167.10 (4) as written provides that fireworks sold to out of state residents must be shipped by common, contract or private motor carrier. Would Senate Bill 338 allow fireworks to be transported in personal automobiles, and if so, does the bill eliminate the requirement that fireworks must be transported in a common, contract or private motor carrier as stated in '95 SB 76?*

Senate Bill 338 would allow nonresidents to purchase fireworks and transport them to a location outside the state in their personal automobile or other vehicle or to have the fireworks shipped by the seller "in accordance with applicable state and federal law." The requirement in current law that shipment of fireworks be made by "common motor carrier, contract motor carrier or private motor carrier" would be eliminated.

Question 4: *If the intent of SB 338 is simply to restore the purported intent of '95 SB 76 in light of State v. Victory Fireworks to allow in-state sales to residents of other states, would elimination of the limitations on allowed carriers included in '95 SB 76 be necessary? Could elimination of these limitations weaken restrictions included in [1995] Act 330?*

The repeal of existing common carrier shipment requirements would not be necessary to allow nonresidents to make in-state purchases of fireworks for use outside the state. The law could be changed to permit a nonresident to purchase fireworks in Wisconsin, and require the nonresident to have the fireworks shipped directly out of the state by common carrier.

For further clarification, it should be noted that in testimony regarding Assembly Bill 685, representatives of the Wisconsin Fireworks Association stated that the main purpose of the bill is to permit nonresident fireworks wholesalers and dealers who make bulk purchases of fireworks from Wisconsin fireworks dealers to pick up those fireworks from the Wisconsin dealer and transport them back to their state. (Apparently the actual purchase is made while the nonresident wholesaler or dealer is in their home state.) Under the court's ruling in *State v. Victory Fireworks Inc.*, a nonresident dealer or wholesaler is prohibited from personally transporting the fireworks back to their state, which according to the Fireworks Association, is a common practice. According to the Wisconsin Fireworks Association, this restriction could have a significant detrimental effect on Wisconsin fireworks wholesalers and dealers. The bill addresses this problem and, in addition, permits the sale of restricted fireworks to nonresidents who are not involved in the fireworks industry but are merely members of the general public. The bill could be amended to address only the issue of sales of fireworks to nonresident fireworks dealers and wholesalers without changing current law regarding the sale of fireworks to the general public.

Question 5: *Does SB 338 require any proof of qualifications or training for those transporting the fireworks, or any limit on the quantity?*

Senate Bill 338 does not require proof of qualifications or training for nonresidents purchasing and transporting fireworks. Senate Bill 338 does not contain any limit on the amount of fireworks which a nonresident may purchase in Wisconsin.

Question 6: *Do the states contiguous to Wisconsin have laws related to the use of the fireworks impacted by SB 338 that are more permissive than those in Wisconsin? (And, if this information is readily available, what is the nearest state from which a person would have to travel to Wisconsin to purchase fireworks as proposed by SB 338 and then return to a state where those fireworks would be legal for use?)*

The laws of the four states contiguous to Wisconsin regarding the sale, use and possession of fireworks are generally as restrictive or more restrictive than Wisconsin law. A summary of those laws is included as an attachment to this memorandum.

Question 7: *Does SB 338 require the seller to obtain any proof that a purchaser is from a state where the fireworks purchased are legal for use, or holds a valid permit for their use in the state intended?*

Question 8: *Does SB 338 require the seller to obtain any proof that the person is in fact a resident of a state other than Wisconsin?*

Senate Bill 338 does not require a person selling fireworks to obtain proof that a prospective buyer is a resident of another state, that the fireworks purchased are legal in the buyer's state of residence, or that the buyer holds a valid permit to use fireworks in another state.

Question 9: *Proponents of the bill point to the continued ability of local governments to enact strict bans for their communities. If passed, would SB 338 allow a community to ban the presence of fireworks in their community, or would any person purchasing fireworks under the modified law be able to bring them into any community if they claimed to have been in that community for 12 hours or less, regardless of local ordinance?*

If Senate Bill 338 becomes law, a municipality could still strictly ban the possession of fireworks. However, both residents and nonresidents would be permitted to possess fireworks in that municipality for 12 hours or less if they are transporting the fireworks to another state or to another municipality where possession is authorized.

Question 10: *If SB 338 became law, would the burden of ensuring that a person with fireworks sold under this proposal, but that are prohibited in a specific community, leave within 12 hours and not use the fireworks in that jurisdiction fall on the seller or local law enforcement?*

Senate Bill 338 does not contain any provisions relating to the enforcement of the 12-hour exception. Because the bill contains no record keeping requirements, it may be difficult for local law enforcement officials to prove when a nonresident purchased fireworks and, thus, how long the fireworks were in their possession. Also, it is unclear how local law enforcement would prove that a person had remained in their locality with fireworks for more than 12 hours.

Question 11: *If SB 338 became law, would a person transporting fireworks illegal for use in Wisconsin be required to notify authorities in a community of their presence? Would a person transporting fireworks subject to local ordinances more strict than state be required to notify local authorities of their presence?*

Under present law and under Senate Bill 338, there is no requirement that a person who is transporting fireworks must notify municipal authorities of his or her presence in the municipality, even if a local ordinance is more stringent than state law.

Question 12: *Would all vehicles transporting fireworks purchased in and transported through the state as allowed by SB 338 be required to have any special marking or designation?*

Senate Bill 338 does not require vehicles transporting fireworks to have any special marking, designation or other identifying features.

Question 13: *Under SB 338, would the burden of ensuring that fireworks sold in Wisconsin but illegal for use here are transported out of this state fall on the seller or local law enforcement?*

Senate Bill 338 does not require a person who sells fireworks to a nonresident to take any steps to ensure that fireworks which they sell to a nonresident for transportation and use outside Wisconsin are actually transported out of the state. Also, the bill does not impose a penalty upon a seller in the event that fireworks which they sell are used illegally in Wisconsin. Since the bill permits nonresidents to take possession of fireworks within the state and transport them in their private vehicle, it does not appear that it would be possible for the seller or local law enforcement agencies to "ensure" that fireworks sold to a nonresident for use outside this state are actually transported out of Wisconsin.

DF:MM:wu:rv;wu

Attachment

ATTACHMENT

Summary of Laws Regarding the Sale, Possession and Use of Fireworks in States Contiguous to Wisconsin

Michigan

Michigan statutes generally prohibit the sale, possession and use of fireworks, which includes all of the following: firecrackers, torpedoes, skyrocketes, Roman candles, daygo bombs, bottle rockets, whistling chasers, rockets on sticks or other fireworks of like construction. [s. 750.243a (2), Michigan Penal Code.]

Michigan statutes provide that a municipality may grant a permit for the use of fireworks which are otherwise prohibited, within their political jurisdiction, for public display by a municipality, fair association, amusement park or other organization or group of individuals approved by the municipality. [s. 750.243b (1), Michigan Penal Code.] Before a permit for a fireworks display may be issued, the person, firm or corporation applying for the permit must furnish proof of financial responsibility by a bond or insurance in an amount deemed necessary by the local governing authority to satisfy claims for damages to property or personal injuries arising out of an act or omission of the person, firm or corporation. [s. 750.243b (3), Michigan Penal Code.]

Michigan law provides that fireworks may be transported within the state only if a permit authorizing possession of those fireworks has been issued by a municipality. Further, all fireworks transported in the state must be transported in accordance with the U.S. Department of Transportation regulations for transportation of explosives and other dangerous articles by motor, rail, and water, including specifications for shipping containers. The fireworks may only be transported in nonpassenger carrying vehicles which are equipped with a 15-pound carbon dioxide or a 10-pound dry chemical fire extinguisher. [s. 750.243c, Michigan Penal Code.]

Minnesota

Minnesota statutes generally prohibit the sale, possession and use of fireworks, which includes all of the following: firecrackers, torpedoes, skyrocketes, Roman candles, daygo bombs, sparklers, or other fireworks of like construction. The prohibition does not apply to sales at wholesale to a person holding a valid permit for a fireworks display from a governmental subdivision of the state, sales outside the state or sales to certain licensed engineers for certain purposes. [s. 624.21, Minn. Stats.]

A municipality may issue a permit for a fireworks display only to an operator certified by the state fire marshal. In order to be certified as an operator, a person must have achieved a passing score on a written examination regarding standards of safe practices for the discharge and display of fireworks. All applications for a fireworks display permit must be referred to the chief of the local fire department who must make an investigation to determine: (a) whether the operator of the display is competent and is certified by the state fire marshal; and (b) whether the display will be hazardous to property or endanger any person. After a permit has been granted, sales, possession, use and distribution of fireworks for the display are lawful for that purpose only. [s. 624.22, Minn. Stats.]

The general prohibition on the sale of fireworks does not prohibit the possession or sale of any kind of fireworks for shipment directly out of the state. [s. 624.23, Minn. Stats.]

Illinois

Illinois statutes generally prohibit the possession, sale and use of fireworks, which includes all of the following: firecrackers, torpedoes, skyrockets, Roman candles, bombs or other fireworks of like construction. Illinois law authorizes municipalities to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks. A permit may be granted to a group of three or more adult individuals, and a permit may be issued only after inspection of the display site by the issuing officer to determine that the display will not be hazardous to property or endanger any person. [425 ILCS 35/1 and 35/2.]

Illinois law does not prohibit the sale of any kind of fireworks provided the fireworks are to be shipped directly out of the state. [425 ILCS 30/13.1.]

Iowa

Iowa statutes generally prohibit the sale and use of fireworks, which includes all of the following: blank cartridges, firecrackers, torpedoes, skyrockets, Roman candles or other fireworks of like construction and fireworks that contain any explosive or flammable compound or other device containing any explosive substance. Illinois law authorizes a city or county to grant a permit for the display of fireworks by a municipality, fair association, amusement park, or other organization or group of individuals approved by the city or county when the fireworks display will be handled by a competent operator. [s. 727.2, Iowa Code.]

Iowa law does not prohibit the sale of fireworks if they are to be shipped out of the state. [s. 727.2, Iowa Code.]

Raymond should stop bogus fireworks permits

We're fans of fireworks.

Have been since we were kids. In our mind's eye there's something gloriously patriotic connected with fireworks and the Fourth of July — a flashing, booming celebration that summons up images of the Star Spangled Banner flying defiantly over Fort McHenry and inspiring Francis Scott Key to pen our national anthem.

But the reality of fireworks that are being shopped in the Town of Raymond is that they're dangerously high-powered and pose a threat of harm to children and a fire threat to buildings.

That is why the bottle rockets, firecrackers and other items cannot be legally possessed in most municipalities across Wisconsin. And that is why there is no place in the county where you can ignite them.

But under the wink and nod system that has developed in the past decade, the town allows the stores to sell \$2 licenses that enable fireworks customers to purchase the wares.

The legal loophole doesn't allow anyone to set off the fireworks and in fact there are fairly stiff fines here in Racine for doing so — \$190 for fireworks possession.

The town allows the operation of two fireworks stores for one main reason — money. The stores contribute about \$45,000 per year to the town's coffers from the \$2 license sales — roughly accounting for 4 percent of the town budget revenues.

While that is not an insignificant amount, it pales in comparison to the potential damage of mishandled fireworks — an injured child or a burned down

home.

Sooner or later that will be the real price the town board is sanctioning by continuing licensing of the fireworks stores. Racine aldermen Bob Morrison and Robert Tingle have been vigorous in asking the board to close the shops — in part because they have seen a rise in fireworks complaints in their districts.

But the opposition does not stop there — the county sheriff, fire officials from Racine and Caledonia and even firefighters from the town of Raymond itself spoke out Monday night against allowing continued sales.

In response, the town board is talking about having a referendum on the fireworks sales. That might well turn the issue into a pocketbook versus safety vote.

It also might delay action until after the 2000 New Year — projected to be a hot time for projectiles.

Frankly, we don't think the town board should duck the issue. We don't recall a referendum in 1993 when the board allowed the bogus licensing system to begin.

Alderman Morrison put the fireworks fight in exactly the right context Monday night when he said, "Your board says it's not legal to have these shot off in your community, yet you allow them to be sold. I don't understand that."

We're sure the town board does want to keep Raymond children from harm. We'd appreciate it if they would be neighborly enough to protect children in surrounding communities as well.

Your Representatives

TOLL-FREE STATE LEGISLATIVE HOTLINE

To leave a message with a legislator or check the status of pending legislation: (800) 362-9472

GOVERNOR

Tommy G. Thomson, Republican, Room 115

Box 8952, Madison, WI 53708-8952, (888) 534-0063 (Madison, toll-free); (608) 266-9171; (fax) 884-4920 (Racine.)

66th District — Cloyd Porter, Republican: P.O. Box 8953, Madison, WI 53708-8953, (888) 534-0066 (Madison, toll-free); (608) 266-7038 (fax); 763-6827 (Burlington).



I'd like to buy pre d



Great vete

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Roy E. Rodgers Appleton

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Isaac Guerra 2032 Carter St.

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Jim Ennis, speaki Racine Unified sch district is contempl of a school to the E. He claimed durin at 6 p m a coumle o



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: April 26, 2000
TO: SENATOR MARY LAZICH
FROM: Don Dyke, Senior Staff Attorney
SUBJECT: Fireworks Permit Issued by Town of Raymond

This memorandum, prepared at the request of your office, provides comment on possible legal issues raised by a permit issued by the Town of Raymond, located in Racine County, to purchase and possess certain fireworks. The comments in this memorandum are based on a sample permit supplied by your office. Please note that an investigation of the actual practices of the Town of Raymond in relation to the permits is necessary in order to provide a complete list of legal issues raised and to render an opinion on those issues. The purpose of this memorandum is to indicate whether the permit, on its face, raises questions regarding its legality under Wisconsin law. Based on my review of the permit, questions may be raised about the legality of the permit.

A. THE PERMIT

The permit in question is titled "Possessor's Permit to Purchase & Possess (D.O.T.) Class C Fireworks." The first paragraph of the permit states that the undersigned town chair or designated official or employe of the town authorizes "the following persons, organizations, non-profit organizations or individuals" to purchase Class C fireworks.

It is indicated that the permit is "valid" to purchase Class C fireworks from January 1, 2000 until December 31, 2000 "up to the amount of \$200.00 worth of fireworks." However, once the permit is used to purchase fireworks, the permit "is only valid to legally possess . . . Class C fireworks." The permit expressly prohibits the *use* of Class C fireworks in the Town of Raymond.

The final paragraph of the permit provides that the permit is issued "upon the recipient agreeing to defend, indemnify, and hold harmless the Town of Raymond and Wisconsin Gift and

Novelty Company in any civil action for any accident or injury occasioned during transportation, handling, storage and/or use of any amount of . . . Class C fireworks whether the claimant is the user or a third party.”

Finally, the permit provides for the following information to be provided on the permit form when issued: to whom the permit is issued; the permittee's address (including street address, city, state and zip code); the permittee's driver's license number; the signature of an authorized town representative; and the issuance date.

B. COMMENT

1. It is assumed that reference to (D.O.T.) Class C fireworks is intended to reference a class of fireworks defined under federal law; that designation no longer exists under federal law. [See 49 C.F.R. s. 173.50.] Thus, the threshold question of whether the permit allows purchase and possession of fireworks regulated under s. 167.10, Stats., cannot be answered with certainty. It is assumed, for purposes of this memorandum, that the permit does allow purchases of and possession of some devices that are defined as fireworks under s. 167.10.
2. Assuming, as discussed above, that the permit references a federal fireworks classification that is no longer in effect, the permit arguably fails to comply with s. 167.10 (3) (f) 3., Stats., which requires a permit to specify the kind and quantity of fireworks that may be purchased.
3. Under the terms of the first paragraph of the permit, it appears that the permit may be issued to any “persons, organizations, non-profit organizations or individuals.” Section 167.10 (3) (c), Stats., strictly limits the issuance of permits by a town to public authorities, fair associations, amusement parks, park boards, civic organizations, groups of resident or nonresident individuals and an agricultural producer for the protection of crops from predatory birds or animals. Note that authority to issue a permit to a group of resident or nonresident individuals only authorizes issuance of a permit to a group, not to the individuals that make up the group. [See *Wisconsin Dells v. Dells Fireworks, Inc.*, 539 N.W. 2d 916 Ct. App. (1995).] Thus, it appears that the permit may be issued to entities, organizations, groups and individuals not authorized to hold a permit under s. 167.10 (3) (c), Stats.
4. Under the terms of the permit, the possession of fireworks pursuant to the permit is not expressly limited to the Town of Raymond. Under s. 167.10 (3) (a), Stats., a permit may be issued by the town in which the possession or use is to occur. This statute appears to indicate that the possession or use of the fireworks pursuant to the permit is to be limited to the Town of Raymond.
5. It is not clear why there is a reference to the Wisconsin Gift and Novelty Company in paragraph 4 of the permit unless that entity in essence issues the permit at the time of purchase of fireworks. Under s. 167.10 (3) (a), Stats., issuance of permits is arguably limited to the town.
6. Note that, while towns have extensive authority under s. 167.10 (5), Stats., to regulate the sale, possession or use of fireworks, that authority does not allow an ordinance that is less restrictive in its coverage, prohibition or regulation than s. 167.10, Stats.

As stated previously, whether the practice of the Town of Raymond in issuing fireworks permits is in violation of s. 167.10, Stats., can only be determined pursuant to a thorough investigation of the facts. However, on its face, the sample permit supplied by your office raises questions concerning whether the permit complies with s. 167.10, Stats.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

DD:ksm;tlu



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0974/1
JTK&RJM:cjs:pg

2

2001 BILL

1 AN ACT to repeal 4.001 (2) to (5), 4.004 and 4.005; to renumber and amend
2 4.001 (1); to repeal and recreate 4.002; and to create 13.92 (1) (b) 3. d. of the
3 statutes; relating to: legislative redistricting.

Analysis by the Legislative Reference Bureau

This bill redistricts, according to the number of inhabitants, the legislative districts of this state based on the results of the 2000 federal decennial census of population. The bill maintains the number of assembly districts at 99 and the number of senate districts at 33. In accordance with article IV, section 4, of the state constitution, all assembly districts created by the bill are bounded by county, town, or ward boundaries. In accordance with article IV, section 5, of the state constitution, no assembly district created under the bill is divided in the creation of a senate district. Under the bill, county and municipal boundaries and wards used to create legislative districts are the boundaries and wards in effect on January 1 of the second year following the year of the federal decennial census (in this case, January 1, 2002). The boundaries do not account for any municipal annexation, detachment, or consolidation after that date.

Current law requires legislative districts to be as uniform in population as is practicable. The chart below illustrates, for both types of legislative district created under the bill, the amount by which the districts with the smallest and largest populations deviate from the average population for the same type of district. The population figures contained in the chart are derived from the results of the federal decennial census, based upon ****[choose sampling data, actual count data, or both]****.

BILL

******[Insert chart displaying population, deviation and percentage deviation for smallest and largest assembly and senate districts]******

For further information, see the appendix printed at the end of this bill. The appendix was prepared by the legislative reference bureau and contains the following information: population statistics for the 33 senate districts and the 99 assembly districts, a statewide map of senate districts, a statewide map of assembly districts (displayed over 2 pages), and a map of Milwaukee county (also 2 pages) showing the assembly district boundaries in that county. The population figures contained in the appendix are derived from the federal decennial census, based upon ******[choose sampling data, actual count data, or both]******.

This bill also requires the legislative reference bureau, in enrolling any redistricting plan that has passed both houses of the legislature, to attach an updated appendix that includes all of the following: the population statistics for the legislative districts created under the bill; a statewide map of the legislative districts created under the bill; a map of the legislative districts created under the bill that are in Milwaukee county; and, with certain exceptions, a detail map illustrating the division of any city, village, or town among two or more legislative districts.

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

1 **SECTION 1.** 4.001 (1) of the statutes is renumbered 4.001 and amended to read:

2 **4.001 Legislative redistricting; equal population districts established.**

3 ~~Based on the certified official results of the 1980 census of population of Wisconsin,~~
4 ~~as received by this state from the U.S. bureau of the census on March 23, 1981, under~~

5 ~~PL. 94-171, the~~ This state is divided into 33 senate districts, each composed of 3
6 assembly districts. Each senate district shall be entitled to elect one member of the
7 senate. Each assembly district shall be entitled to elect one representative to the
8 assembly.

9 **SECTION 2.** 4.001 (2) to (5) of the statutes are repealed.

10 **SECTION 3.** 4.002 of the statutes is repealed and recreated to read:

11 **4.002 County and municipal boundaries and wards.** In this chapter:



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0943/1

RJM:.....

1
CMNR
DWOE

11-22-00

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1

AN ACT ...; relating to: ???

permits for the possession or use of certain fireworks, sales of fireworks to certain groups, liability for the use of illegally sold fireworks, and the authority of district attorneys to enforce laws relating to fireworks.

Analysis by the Legislative Reference Bureau

Current law regulates the possession, use, sale, storage, handling, and manufacture of certain fireworks. With certain exceptions, current law requires any person who possesses or uses regulated fireworks to have a fireworks permit that was issued by the city, village, or town (municipality) in which the possession or use occurs. Current law authorizes the mayor, president, or chairperson of a municipality, or other designated municipal official or employee, to issue a fireworks permit. In addition, under current law, a fire or law enforcement official of the municipality must be given a copy of a permit at least 4 days before the date of the use authorized in the permit. Current law does not specify who is required to give this copy to the fire or law enforcement official.

This bill specifies that a person must obtain a fireworks permit directly from the municipality that issues the permit. The bill also specifies that the municipal official or employee who issues the fireworks permit must do so at a location where he or she, in the normal course of municipal affairs, carries out his or her official responsibilities or duties. In addition, the bill requires each permit issued by a municipality to be approved and signed by a fire official of the municipality. The bill replaces the requirement that a copy of each permit be given to a fire or law enforcement official of the municipality with a requirement that the fire official retain a copy of each permit he or she approves and signs. The bill also specifies that a municipality may not issue a fireworks permit if less than 2 days remain before the date that the fireworks may be used under the permit.

With limited exceptions, current law prohibits the sale of regulated fireworks to any person who does not hold a fireworks permit. Only certain persons may obtain

a fireworks permit under current law. These persons include, among others, any group of resident or nonresident individuals.

With certain limited exceptions, this bill imposes additional requirements on a group of resident or nonresident individuals that seeks to obtain a fireworks permit. Under the bill, a municipality may issue a permit to this type of group only if the permit is provided to an individual who gives the municipality reasonable proof that he or she has been a member of the group for at least six months and is authorized to act on behalf of the group. In addition, under the bill, a municipality may not issue a permit to this type of group if, within the ~~3~~ ^{Six} months preceding the date on which the permit is requested, the municipality provided a different individual with a permit for the group.

Under current law, certain individuals, including parents, foster parents, and legal guardians, may be held liable for damages caused by the use of fireworks by minors for whom the individuals are responsible. This bill creates another liability provision under which a person who illegally sells fireworks may be held liable for any damage to property, bodily injury, and death that is caused by the use of the fireworks.

Current law allows a municipality to enact ordinances that regulate the possession, use, and sale of fireworks in the municipality, provided the ordinances are at least as restrictive as similar provisions in the state fireworks law. A municipality may sue in circuit court for an order enjoining violations of its ordinances or violations of certain state laws relating to fireworks. This bill grants district attorneys the same authority to petition for an order enjoining violations of state laws relating to fireworks as is currently provided to municipalities.

For further information see the *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. 167.10 (3) (a) of the statutes is amended to read:

2 167.10 (3) (a) No person may possess or use fireworks without a user's permit,[✓]
 3 obtained by the person from the ~~mayor of the city, president of the village or~~
 4 ~~chairperson of the town~~ city, village, or town[✓] in which the possession or use is to occur
 5 ~~or from an official or employee of that municipality designated by the mayor,~~
 6 ~~president or chairperson,~~ that specifically authorizes the possession or use.[✓] No
 7 person may use fireworks or a device listed under sub. (1) (e) to (g) or (i) to (n) while

1 attending a fireworks display for which a permit has been issued to a person listed
2 under par. (c) 1. to 5. or under par. (c) 6. if the display is open to the general public.

3 **SECTION 2.** 167.10 (3) (cm)^X of the statutes is created to read:

4 167.10 (3) (cm) 1. Each permit issued by a city, village, or town under this
5 subsection[✓] shall be issued by the mayor or city manager of the city, president of the
6 village, or chairperson of the town, or an official or employee[✓] of that municipality
7 designated by the mayor, city manager, president, or chairperson, acting on behalf
8 of that municipality. The mayor, city manager, president, chairperson, or designated
9 official or employee shall issue each permit under this subsection[✓] at a location where
10 he or she, in the normal course of municipal affairs, carries out his or her official
11 responsibilities or duties.

12 2. A fire official of a city, village, or town shall approve and sign each permit
13 under this subsection before the permit is issued by that city, village, or town. The
14 fire official shall retain a copy of each permit that the fire official approves and signs.

15 3. A city, village, or town may issue a permit under this subsection only if the
16 permit is issued at least ²~~two~~ days before the date of the use authorized under the
17 permit.

18 **SECTION 3.** 167.10 (3) (e)^X of the statutes is amended to read:

19 167.10 (3) (e) The ~~person~~ city, village, or town[✓] issuing a permit under this
20 subsection may require an indemnity bond with good and sufficient sureties or policy
21 of liability insurance for the payment of all claims that may arise by reason of injuries
22 to person or property from the handling, use or discharge of fireworks under the
23 permit. The bond or policy, if required, shall be taken in the name of the city, village
24 or town wherein the fireworks are to be used, and any person injured thereby may
25 bring an action on the bond or policy in the person's own name to recover the damage

1 the person has sustained, but the aggregate liability of the surety or insurer to all
2 persons shall not exceed the amount of the bond or policy. The bond or policy, if
3 required, together with a copy of the permit shall be filed in the office of the clerk of
4 the city, village or town.

5 SECTION 4. 167.10 (3) (g) [✓] of the statutes is repealed.

6 SECTION 5. 167.10 (3) (i) [✓] of the statutes is created to read:

7 167.10 (3) (i) A city, village, or town may not issue a permit under this
8 subsection to a group of resident or nonresident individuals, other than a group that
9 is described in par. (c) 1. to 5. or [✓] 7., unless all of the following are satisfied:

10 1. The permit is provided to an individual who gives the city, village, or town
11 reasonable proof that the individual has been a member of the group for at least the
12 ⁶ ~~six~~ months preceding the date on which the permit is requested and that the
13 individual is authorized to act on behalf of the group.

14 2. The city, village, or town has not, during the 6 months preceding the date on
15 which the permit is requested, provided a different individual with a permit issued
16 to the group under this subsection.

17 SECTION 6. 167.10 (7) (title) [✓] of the statutes is repealed and recreated to read:

18 167.10 (7) (title) LIABILITY.

19 SECTION 7. 167.10 (7) [✓] of the statutes is renumbered 167.10 (7) (a).

20 SECTION 8. 167.10 (7) (b) [✓] of the statutes is created to read:

21 167.10 (7) (b) A person who sells fireworks in violation of sub. [✓] (2) may be held
22 liable for any bodily injury to or death of others and for any damage to the property
23 of others that is caused by the use of the fireworks.

24 SECTION 9. 167.10 (8) (a) [✓] of the statutes is amended to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0943/1dn

RJM:.....

↑
Jld

Mary Matthias:

Attached, please find the fireworks draft you requested on behalf of Representative Steinbrink. As you review the draft, please note the following issues and let me know if you desire any changes:

A. You requested that this bill require a municipal fire official to sign each fireworks permit. It was unclear to me whether you intended to allow the fire official to sign permits in advance, or require the fire official to sign each permit that the fire official approves. This draft requires the fire official to approve and sign each permit before it is issued. See proposed s. 167.10 (3) (cm) 2. ✓

This new requirement caused me to include another statutory change. Currently, s. 167.10 (3) (g) states that a municipal fire official or officer must be given a copy of each permit at least ~~7~~^{two} days before the authorized use of the fireworks. This statute has two effects: it requires a fire or law enforcement official to be given a copy of each permit and it prohibits a municipality from issuing a permit if less than ~~7~~^{two} days remain before the authorized use of the fireworks. Because the draft requires a fire official to approve and sign each permit, it seemed logical to also require the fire official to retain a copy of each permit approved and signed. See proposed s. 167.10 (3) (cm) 2. In addition, the draft retains the ban on permits issued less than two days before the date of the authorized use of the fireworks. See proposed s. 167.10 (3) (cm) 3. ✓

B. You requested that a municipality be allowed to issue a group permit only to one individual who has been a member of the group for at least ~~3~~^{six} months and who is authorized to act on behalf of the group. Please review proposed s. 167.10 (3) (i) 1., which requires the individual to provide reasonable proof that these new requirements are satisfied. It was unclear to me, though, what was intended with regard to limiting the group permit to one individual. Please review proposed s. 167.10 (3) (i) 2. ✓ and let me know if I have missed the mark.

C. The liability provision in proposed s. 167.10 (7) (b) ✓ covers liability for damages, injuries, and death. Please let me know if this provision is broader than you intend.

D D. The draft includes an initial applicability provision that grandfathers any existing permits and that clarifies when the new liability provision first applies.

E E. The draft updates the provisions that apply to mayors to also apply to city managers.

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-0943/1dn
RJM:jld:km

November 20, 2000

Mary Matthias:

Attached, please find the fireworks draft you requested on behalf of Representative Steinbrink. As you review the draft, please note the following issues and let me know if you desire any changes:

A. You requested that this bill require a municipal fire official to sign each fireworks permit. It was unclear to me whether you intended to allow the fire official to sign permits in advance, or require the fire official to sign each permit that the fire official approves. This draft requires the fire official to approve and sign each permit before it is issued. See proposed s. 167.10 (3) (cm) 2.

This new requirement caused me to include another statutory change. Currently, s. 167.10 (3) (g) states that a municipal fire official or officer must be given a copy of each permit at least two days before the authorized use of the fireworks. This statute has two effects: it requires a fire or law enforcement official to be given a copy of each permit and it prohibits a municipality from issuing a permit if less than two days remain before the authorized use of the fireworks. Because the draft requires a fire official to approve and sign each permit, it seemed logical to also require the fire official to retain a copy of each permit approved and signed. See proposed s. 167.10 (3) (cm) 2. In addition, the draft retains the ban on permits issued less than two days before the date of the authorized use of the fireworks. See proposed s. 167.10 (3) (cm) 3.

B. You requested that a municipality be allowed to issue a group permit only to one individual who has been a member of the group for at least six months and who is authorized to act on behalf of the group. Please review proposed s. 167.10 (3) (i) 1., which requires the individual to provide reasonable proof that these new requirements are satisfied. It was unclear to me, though, what was intended with regard to limiting the group permit to one individual. Please review proposed s. 167.10 (3) (i) 2. and let me know if I have missed the mark.

C. The liability provision in proposed s. 167.10 (7) (b) covers liability for damages, injuries, and death. Please let me know if this provision is broader than you intend.

D. The draft includes an initial applicability provision that grandfathers any existing permits and that clarifies when the new liability provision first applies.

E. The draft updates the provisions that apply to mayors to also apply to city managers.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
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State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0943A

RJM:jld:km

2

SOON

RMR

2001 BILL

Regen

✓
Organizations and

1 AN ACT to repeal 167.10 (3) (g); to renumber 167.10 (7); to amend 167.10 (3)
2 (a), 167.10 (3) (e), 167.10 (8) (a), 895.035 (7) and 895.485 (2) (intro.); to repeal
3 and recreate 167.10 (7) (title); and to create 167.10 (3) (cm), 167.10 (3) (i) and
4 167.10 (7) (b) of the statutes; relating to: permits for the possession or use of
5 certain fireworks, sales of fireworks to certain groups, liability for the use of
6 illegally sold fireworks, and the authority of district attorneys to enforce laws
7 relating to fireworks.

Analysis by the Legislative Reference Bureau

Current law regulates the possession, use, sale, storage, handling, and manufacture of certain fireworks. With certain exceptions, current law requires any person who possesses or uses regulated fireworks to have a fireworks permit that was issued by the city, village, or town (municipality) in which the possession or use occurs. Current law authorizes the mayor, president, or chairperson of a municipality, or other designated municipal official or employee, to issue a fireworks permit. In addition, under current law, a fire or law enforcement official of the municipality must be given a copy of a permit at least two days before the date of the use authorized in the permit. Current law does not specify who is required to give this copy to the fire or law enforcement official.

This bill specifies that a person must obtain a fireworks permit directly from the municipality that issues the permit. The bill also specifies that the municipal

BILL

Civic organization or

official or employee who issues the fireworks permit must do so at a location where he or she, in the normal course of municipal affairs, carries out his or her official responsibilities or duties. In addition, the bill requires each permit issued by a municipality to be approved and signed by a fire official of the municipality. The bill replaces the requirement that a copy of each permit be given to a fire or law enforcement official of the municipality with a requirement that the fire official retain a copy of each permit he or she approves and signs. The bill also specifies that a municipality may not issue a fireworks permit if less than two days remain before the date that the fireworks may be used under the permit.

With limited exceptions, current law prohibits the sale of regulated fireworks to any person who does not hold a fireworks permit. Only certain persons may obtain a fireworks permit under current law. These persons include, among others, any group of resident or nonresident individuals.

With certain limited exceptions, this bill imposes additional requirements on a group of resident or nonresident individuals that seeks to obtain a fireworks permit. Under the bill, a municipality may issue a permit to this type of group only if the permit is provided to an individual who gives the municipality reasonable proof that he or she has been a member of the group for at least six months and is authorized to act on behalf of the group. In addition, under the bill, a municipality may not issue a permit to this type of group if, within the six months preceding the date on which the permit is requested, the municipality provided a different individual with a permit for the group.

Under current law, certain individuals, including parents, foster parents, and legal guardians, may be held liable for damages caused by the use of fireworks by minors for whom the individuals are responsible. This bill creates another liability provision under which a person who illegally sells fireworks may be held liable for any damage to property, bodily injury, ~~and~~ death that is caused by the use of the fireworks.

Current law allows a municipality to enact ordinances that regulate the possession, use, and sale of fireworks in the municipality, provided the ordinances are at least as restrictive as similar provisions in the state fireworks law. A municipality may sue in circuit court for an order enjoining violations of its ordinances or violations of certain state laws relating to fireworks. This bill grants district attorneys the same authority to petition for an order enjoining violations of state laws relating to fireworks as is currently provided to municipalities.

For further information see the *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:

SECTION 1. 167.10 (3) (a) of the statutes is amended to read:

Civic organization or

organization or

delete MOVE

BILL

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

9 **SECTION 2.** 167.10 (3) (cm) of the statutes is created to read:

10 167.10 (3) (cm) 1. Each permit issued by a city, village, or town under this
11 subsection shall be issued by the mayor or city manager of the city, president of the
12 village, or chairperson of the town, or an official or employee of that municipality
13 designated by the mayor, city manager, president, or chairperson, acting on behalf
14 of that municipality. The mayor, city manager, president, chairperson, or designated
15 official or employee shall issue each permit under this subsection at a location where
16 he or she, in the normal course of municipal affairs, carries out his or her official
17 responsibilities or duties.

18 2. A fire official of a city, village, or town shall approve and sign each permit
19 under this subsection before the permit is issued by that city, village, or town. The
20 fire official shall retain a copy of each permit that the fire official approves and signs.

21 3. A city, village, or town may issue a permit under this subsection only if the
22 permit is issued at least 2 days before the date of the use authorized under the
23 permit.

24 **SECTION 3.** 167.10 (3) (e) of the statutes is amended to read:

BILL

1 167.10 (3) (e) The person city, village, or town issuing a permit under this
 2 subsection may require an indemnity bond with good and sufficient sureties or policy
 3 of liability insurance for the payment of all claims that may arise by reason of injuries
 4 to person or property from the handling, use or discharge of fireworks under the
 5 permit. The bond or policy, if required, shall be taken in the name of the city, village
 6 or town wherein the fireworks are to be used, and any person injured thereby may
 7 bring an action on the bond or policy in the person's own name to recover the damage
 8 the person has sustained, but the aggregate liability of the surety or insurer to all
 9 persons shall not exceed the amount of the bond or policy. The bond or policy, if
 10 required, together with a copy of the permit shall be filed in the office of the clerk of
 11 the city, village or town.

12 **SECTION 4.** 167.10 (3) (g) of the statutes is repealed.

13 **SECTION 5.** 167.10 (3) (i) of the statutes is created to read:

civic organization of

14 167.10 (3) (i) A city, village, or town may not issue a permit under this
 15 subsection to a group of resident or nonresident individuals, other than a group that
 16 is described in par. (c) 1. to ⁴ or 7., unless all of the following are satisfied:

17 1. The permit is provided to an individual who gives the city, village, or town
 18 reasonable proof that the individual has been a member of the group for at least the
 19 6 months preceding the date on which the permit is requested and that the individual
 20 is authorized to act on behalf of the group.

21 2. The city, village, or town has not, during the 6 months preceding the date on
 22 which the permit is requested, provided a different individual with a permit issued
 23 to the group under this subsection.

24 **SECTION 6.** 167.10 (7) (title) of the statutes is repealed and recreated to read:

25 167.10 (7) (title) LIABILITY.

BILL

1 **SECTION 7.** 167.10 (7) of the statutes is renumbered 167.10 (7) (a).

2 **SECTION 8.** 167.10 (7) (b) of the statutes is created to read:

3 167.10 (7) (b) A person who sells fireworks in violation of sub. (2) may be held
4 liable for any bodily injury to or death of others and for any damage to the property
5 of others that is caused by the use of the fireworks.

6 **SECTION 9.** 167.10 (8) (a) of the statutes is amended to read:

7 167.10 (8) (a) A city, village or town may petition the circuit court for an order
8 enjoining violations of sub. (2), (3) or (6) or an ordinance adopted under sub. (5)
9 within the municipality. A district attorney of a county where violations of sub. (2),
10 (3), or (6) occur may petition the circuit court for an order enjoining the violations.

11 **SECTION 10.** 895.035 (7) of the statutes is amended to read:

12 895.035 (7) This section does not affect or limit any liability of a parent under
13 s. 167.10 (7) (a) or 343.15 (2).

14 **SECTION 11.** 895.485 (2) (intro.) of the statutes is amended to read:

15 895.485 (2) (intro.) Except as provided in ss. 167.10 (7) (a) and 343.15 (2), any
16 foster, treatment foster or family-operated group home parent licensed under s.
17 48.62 or 48.625 is immune from civil liability for any of the following:

18 **SECTION 12. Initial applicability.**

19 (1) **PERMITS.** The treatment of section 167.10 (3) (a), (cm), (g), and (i) of the
20 statutes first applies to permits issued under section 167.10 (3) of the statutes on the
21 effective date of this subsection.

22 (2) **LIABILITY.** The treatment of section 167.10 (7) (b) of the statutes first applies
23 to bodily injury to or death of others and to damage to the property of others that is
24 caused by the use of the fireworks sold on the effective date of this subsection.

25

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

3
LRB-0943/8

RJM:jld:pg

Wednesday 1-10

Remove

2001 BILL

1 **AN ACT to repeal** 167.10 (3) (g); **to renumber** 167.10 (7); **to amend** 167.10 (3)
2 (a), 167.10 (3) (e), 167.10 (8) (a), 895.035 (7) and 895.485 (2) (intro.); **to repeal**
3 **and recreate** 167.10 (7) (title); and **to create** 167.10 (3) (cm), 167.10 (3) (i) and
4 167.10 (7) (b) of the statutes; **relating to:** permits for the possession or use of
5 certain fireworks, sales of fireworks to certain organizations and groups,
6 liability for the use of illegally sold fireworks, and the authority of district
7 attorneys to enforce laws relating to fireworks.

Analysis by the Legislative Reference Bureau

Current law regulates the possession, use, sale, storage, handling, and manufacture of certain fireworks. With certain exceptions, current law requires any person who possesses or uses regulated fireworks to have a fireworks permit that was issued by the city, village, or town (municipality) in which the possession or use occurs. Current law authorizes the mayor, president, or chairperson of a municipality, or other designated municipal official or employee, to issue a fireworks permit. In addition, under current law, a fire or law enforcement official of the municipality must be given a copy of a permit at least two days before the date of the use authorized in the permit. Current law does not specify who is required to give this copy to the fire or law enforcement official.

This bill specifies that a person must obtain a fireworks permit directly from the municipality that issues the permit. The bill also specifies that the municipal

BILL

NO 4 Any fireworks sold to ~~an~~ organization or group under the bill may be provided by the seller only to the individual who obtained the permit on behalf of the organization or group.

official or employee who issues the fireworks permit must do so at a location where he or she, in the normal course of municipal affairs, carries out his or her official responsibilities or duties. In addition, the bill requires each permit issued by a municipality to be approved and signed by a fire official of the municipality. The bill replaces the requirement that a copy of each permit be given to a fire or law enforcement official of the municipality with a requirement that the fire official retain a copy of each permit he or she approves and signs. The bill also specifies that a municipality may not issue a fireworks permit if less than two days remain before the date that the fireworks may be used under the permit.

With limited exceptions, current law prohibits the sale of regulated fireworks to any person who does not hold a fireworks permit. Only certain persons may obtain a fireworks permit under current law. These persons include, among others, any civic organization or group of resident or nonresident individuals.

With certain limited exceptions, this bill imposes additional requirements on a civic organization or group of resident or nonresident individuals that seeks to obtain a fireworks permit. Under the bill, a municipality may issue a permit to this type of organization or group only if the permit is provided to an individual who gives the municipality reasonable proof that he or she has been a member of the organization or group for at least six months and is authorized to act on behalf of the organization or group. In addition, under the bill, a municipality may not issue a permit to this type of organization or group if, within the six months preceding the date on which the permit is requested, the municipality provided a different individual with a permit for the organization or group.

Under current law, certain individuals, including parents, foster parents, and legal guardians, may be held liable for damages caused by the use of fireworks by minors for whom the individuals are responsible. This bill creates another liability provision under which a person who illegally sells fireworks may be held liable for any bodily injury, death, and damage to property that is caused by the use of the fireworks.

Current law allows a municipality to enact ordinances that regulate the possession, use, and sale of fireworks in the municipality, provided the ordinances are at least as restrictive as similar provisions in the state fireworks law. A municipality may sue in circuit court for an order enjoining violations of its ordinances or violations of certain state laws relating to fireworks. This bill grants district attorneys the same authority to petition for an order enjoining violations of state laws relating to fireworks as is currently provided to municipalities.

For further information see the *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:

INSECT
2-1
1

SECTION 1. 167.10 (3) (a) of the statutes is amended to read:

BILL

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

9 **SECTION 2.** 167.10 (3) (cm) of the statutes is created to read:

10 167.10 (3) (cm) 1. Each permit issued by a city, village, or town under this
11 subsection shall be issued by the mayor or city manager of the city, president of the
12 village, or chairperson of the town, or an official or employee of that municipality
13 designated by the mayor, city manager, president, or chairperson, acting on behalf
14 of that municipality. The mayor, city manager, president, chairperson, or designated
15 official or employee shall issue each permit under this subsection at a location where
16 he or she, in the normal course of municipal affairs, carries out his or her official
17 responsibilities or duties.

18 2. A fire official of a city, village, or town shall approve and sign each permit
19 under this subsection before the permit is issued by that city, village, or town. The
20 fire official shall retain a copy of each permit that the fire official approves and signs.

21 3. A city, village, or town may issue a permit under this subsection only if the
22 permit is issued at least 2 days before the date of the use authorized under the
23 permit.

24 **SECTION 3.** 167.10 (3) (e) of the statutes is amended to read:

BILL

1 167.10 (3) (e) The ~~person~~ city, village, or town issuing a permit under this
2 subsection may require an indemnity bond with good and sufficient sureties or policy
3 of liability insurance for the payment of all claims that may arise by reason of injuries
4 to person or property from the handling, use or discharge of fireworks under the
5 permit. The bond or policy, if required, shall be taken in the name of the city, village
6 or town wherein the fireworks are to be used, and any person injured thereby may
7 bring an action on the bond or policy in the person's own name to recover the damage
8 the person has sustained, but the aggregate liability of the surety or insurer to all
9 persons shall not exceed the amount of the bond or policy. The bond or policy, if
10 required, together with a copy of the permit shall be filed in the office of the clerk of
11 the city, village or town.

12 **SECTION 4.** 167.10 (3) (g) of the statutes is repealed.

13 **SECTION 5.** 167.10 (3) (i) of the statutes is created to read:

14 167.10 (3) (i) A city, village, or town may not issue a permit under this
15 subsection to a civic organization or group of resident or nonresident individuals,
16 other than a civic organization or group that is described in par. (c) 1. to 4. or 7., unless
17 all of the following are satisfied:

18 1. The permit is provided to an individual who gives the city, village, or town
19 reasonable proof that the individual has been a member of the civic organization or
20 group for at least the 6 months preceding the date on which the permit is requested
21 and that the individual is authorized to act on behalf of the civic organization or
22 group.

23 (3) ~~(b)~~ The city, village, or town has not, during the 6 months preceding the date on
24 which the permit is requested, provided a different individual with a permit issued
25 to the civic organization or group under this subsection.

BILL

1 **SECTION 6.** 167.10 (7) (title) of the statutes is repealed and recreated to read:

2 167.10 (7) (title) LIABILITY.

3 **SECTION 7.** 167.10 (7) of the statutes is renumbered 167.10 (7) (a).

4 **SECTION 8.** 167.10 (7) (b) of the statutes is created to read:

5 167.10 (7) (b) A person who sells fireworks in violation of sub. (2) may be held
6 liable for any bodily injury to or death of others and for any damage to the property
7 of others that is caused by the use of the fireworks.

8 **SECTION 9.** 167.10 (8) (a) of the statutes is amended to read:

9 167.10 (8) (a) A city, village or town may petition the circuit court for an order
10 enjoining violations of sub. (2), (3) or (6) or an ordinance adopted under sub. (5)
11 within the municipality. A district attorney of a county where violations of sub. (2),
12 (3), or (6) occur may petition the circuit court for an order enjoining the violations.

13 **SECTION 10.** 895.035 (7) of the statutes is amended to read:

14 895.035 (7) This section does not affect or limit any liability of a parent under
15 s. 167.10 (7) (a) or 343.15 (2).

16 **SECTION 11.** 895.485 (2) (intro.) of the statutes is amended to read:

17 895.485 (2) (intro.) Except as provided in ss. 167.10 (7) (a) and 343.15 (2), any
18 foster, treatment foster or family-operated group home parent licensed under s.
19 48.62 or 48.625 is immune from civil liability for any of the following:

20 **SECTION 12. Initial applicability.**

21 (1) PERMITS. The treatment of section 167.10 (3) (a), (cm), (g), and (i) of the
22 statutes first applies to permits issued under section 167.10 (3) of the statutes on the
23 effective date of this subsection.

DWS 5/20
5-20

#5

BILL

1 ~~3~~ (2) LIABILITY. The treatment of section 167.10 (7) (b) of the statutes first applies
2 to bodily injury to or death of others and to damage to the property of others that is
3 caused by the use of the fireworks sold on the effective date of this subsection.

4 (END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0943/3ins
RJM:.....

INSERT 2-1

SECTION 1. 167.10 (2) (a) [✓] of the statutes is amended to read:

167.10 (2) (a) To a person holding a permit under sub. (3) (c). A person who sells fireworks to a civic organization or group of resident or nonresident individuals holding a permit under sub. (3) (c), [✓] other than a civic organization or group that is described in sub. (3) (c) 1. to 4. or 7., [✓] may provide the fireworks only to the individual to whom the permit is provided under sub. (3) (i);

INSERT 4-22

2. The permit states the name of the individual to whom the permit is [✓] provided.

INSERT 5-20

~~①~~ [#] SALES. The treatment of section 167.10 (2) (a) [✓] of the statutes first applies to transactions entered into on the effective date of this subsection. [✓]

Gretschmann, Karen

From: Marchant, Robert
Sent: Thursday, January 18, 2001 5:09 PM
To: Gretschmann, Karen
Subject: FW: Steinbrink fireworks draft (0943/3)

Karen--

Can you take care of this for me?

Thanks.

Robert J. Marchant
Legislative Attorney
State of Wisconsin Legislative Reference Bureau
robert.marchant@legis.state.wi.us

-----Original Message-----

From: Gaston, Geoff
Sent: Thursday, January 18, 2001 3:40 PM
To: Marchant, Robert
Subject: Steinbrink fireworks draft (0943/3)

I don't seem to have a copy of the draft with the cover sheet for jacketing. Not sure if I misplaced it, but could we get a copy with the cover sheet? Thanks.

Geoff
Rep. Steinbrink's office
6-0455

*Jacket
per Geoff
1/19/01*