

2001 ASSEMBLY BILL 362

April 30, 2001 – Introduced by Representatives SYKORA, ALBERS, BALOW, GRONEMUS, JOHNSRUD, KREUSER, LA FAVE, MUSSER, PLOUFF, RYBA, STONE, SKINDRUD and PETTIS, cosponsored by Senators BRESKE, BURKE and FARROW. Referred to Committee on Small Business and Consumer Affairs.

1 **AN ACT to amend** 110.07 (1) (a) 1., 110.07 (1) (b), 167.10 (2) (intro.), 167.10 (3)
2 (a), 167.10 (3) (b) (intro.), 167.10 (3) (bm), 167.10 (4) and 167.10 (8) (b); **to repeal**
3 **and recreate** 167.10 (3) (title); and **to create** 167.10 (2) (d), 167.10 (3) (b) 8.,
4 345.11 (1t) and 345.20 (2) (h) of the statutes; **relating to:** the possession and
5 sale of fireworks, enforcement by the state traffic patrol of restrictions on the
6 possession and use of fireworks, and limiting seizure of certain fireworks for
7 law enforcement purposes.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from possessing or using fireworks without a permit unless certain conditions apply. It is unclear under current law whether a person who intends to lawfully sell fireworks must have a permit to possess the fireworks pending their sale. A person who uses or possesses fireworks without a permit is subject to a fine of not more than \$1,000. In addition, fireworks possessed or used by a person who violates any provision of the fireworks laws, any fireworks ordinance, or certain court orders relating to fireworks may be seized and held as evidence of the violation.

With limited exceptions, current law also prohibits the sale of regulated fireworks to any person who does not hold a permit. One exception in current law authorizes a resident wholesaler to sell regulated fireworks “to a person outside of

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this state.” In *State v. Victory Fireworks, Inc.*, 230 Wis. 2nd 721 (Ct. App. 1999), the court of appeals held that this exception only permits a sale to a person who is physically located outside of this state.

Current law also grants state traffic patrol officers specific power and duties, including the enforcement of state traffic laws, enforcement of the conditions placed on the possession and transport of a firearm, bow, or crossbow, and enforcement of the prohibition against littering on a highway. This bill expands the powers and duties of state traffic patrol officers to include the enforcement of the permit requirement for the possession and use of fireworks, where applicable, to highways. In exercising this new power and duty, state traffic patrol officers may issue uniform traffic citations for violations of the permit requirement. This bill also prohibits a court from forwarding a record of conviction for violation of the permit requirement to the department of transportation (DOT) and prohibits DOT from assessing any demerit points against the person’s driving record for the conviction.

This bill also reverses *State v. Victory Fireworks, Inc.* Under this bill, a resident wholesaler may sell regulated fireworks to any nonresident person if the nonresident person gives the wholesaler a signed statement indicating that the fireworks are for use outside of this state. The bill authorizes a nonresident person to transport fireworks to an out-of-state location and 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. 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.

In addition, this bill clarifies that a person who intends to lawfully sell regulated fireworks may possess the fireworks without first obtaining a fireworks permit. The bill also deletes the authority for the seizure of fireworks that are possessed or used in violation of the fireworks laws or a fireworks ordinance, unless the violation is subject to criminal penalties under the fireworks laws. The bill retains the authority to seize fireworks that are possessed or used in violation of certain court orders.

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

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

1 **SECTION 1.** 110.07 (1) (a) 1. of the statutes is amended to read:
2 110.07 **(1)** (a) 1. Enforce and assist in the administration of this chapter and
3 chs. 166, 194, 218, 341 to 349, and 351, and ss. 23.33, 125.07 (4) (b), 125.085 (3) (b),

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1 167.10 (3) (a), 167.31 (2) (b) to (d), and 287.81 and ch. 350 where applicable to
2 highways, or orders or rules issued pursuant thereto.

3 **SECTION 2.** 110.07 (1) (b) of the statutes is amended to read:

4 110.07 (1) (b) All municipal judges, judges, district attorneys, and law
5 enforcement officers shall assist in enforcing this chapter, ss. 167.10 (3) (a), 167.31
6 (2) (b) to (d), and 287.81 and chs. 194, 218, and 341 to 351, and orders or rules issued
7 pursuant thereto and shall report to the department the disposition of every uniform
8 traffic citation issued for cases involving those chapters.

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

10 167.10 (2) SALE. (intro.) No person may sell ~~or possess with intent to sell~~
11 fireworks, except to any of the following:

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

13 (b) ~~To a~~ A city, village, or town; ~~or~~;

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

15 **SECTION 4.** 167.10 (2) (d) of the statutes is created to read:

16 167.10 (2) (d) A nonresident person who, prior to the sale, gives the seller a
17 signed statement indicating that the fireworks are for use outside of this state.

18 **SECTION 5.** 167.10 (3) (title) of the statutes is repealed and recreated to read:

19 167.10 (3) (title) POSSESSION AND USE.

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

21 167.10 (3) (a) ~~No~~ Except as otherwise provided in this paragraph, no person
22 may possess or use fireworks without a user's permit from the mayor of the city,
23 president of the village, or chairperson of the town in which the possession or use is
24 to occur or from an official or employee of that municipality designated by the mayor,
25 president, or chairperson. This paragraph does not prohibit the possession of

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1 fireworks with intent to sell the fireworks in compliance with sub. (2). No person may
2 use fireworks or a device listed under sub. (1) (e) to (g) or (i) to (n) while attending
3 a fireworks display for which a permit has been issued to a person listed under par.
4 (c) 1. to 5. or under par. (c) 6. if the display is open to the general public.

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

6 167.10 (3) (b) (intro.) ~~Paragraph (a) does~~ The prohibitions under par. (a) do not
7 apply to:

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

9 167.10 (3) (b) 8. Except as provided in par. (bm), the possession of fireworks by
10 a nonresident person in any city, town, or village if the nonresident person intends
11 to use the fireworks outside of this state and is transporting the fireworks to a
12 location outside of this state.

13 **SECTION 9.** 167.10 (3) (bm) of the statutes is amended to read:

14 167.10 (3) (bm) Paragraph (a) applies to a person transporting fireworks under
15 par. (b) 7. or 8. if, in the course of transporting the fireworks through a city, town, or
16 village, the person remains in that city, town, or village for a period of at least 12
17 hours.

18 **SECTION 10.** 167.10 (4) of the statutes is amended to read:

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

