

**2003 DRAFTING REQUEST**

**Bill**

Received: **04/22/2003**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **John Steinbrink (608) 266-0455**

By/Representing: **geoff**

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

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

Subject: **Buildings/Safety - fireworks**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Steinbrink@legis.state.wi.us**

Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us**

**Pre Topic:**

No specific pre topic given

**Topic:**

Fireworks

**Instructions:**

Redraft LRB-2112

**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 04/22/2003	csicilia 04/24/2003		_____			State Crime
/1			rschluet 04/24/2003	_____	lemery 04/24/2003	lemery 06/06/2003	

FE Sent For:

<END>

AA  
Intro.

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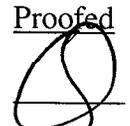
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1?	rmarchan	1 cjs 4/24/03					

4-24-03

FE Sent For:

<END>

IR: 4-22

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2003 BILL

SA

Repeal cont.

LPS: delete all note: std's

1 AN ACT ~~to repeal~~ 167.10 (3) (c) 1. to 7. and 167.10 (3) (g); **to renumber** 167.10  
 2 (7); **to renumber and amend** 167.10 (3) (a), 167.10 (3) (c) (intro.) and 167.10  
 3 (3) (d); **to amend** 20.143 (3) (j), 167.10 (2), 167.10 (3) (title), 167.10 (3) (e), 167.10  
 4 (3) (f) (intro.) and 4., 167.10 (3) (h), 167.10 (4), 167.10 (8) (a) and (b) and 167.10  
 5 (9) (b); **to repeal and recreate** 167.10 (7) (title); and **to create** 167.10 (2) (d),  
 6 167.10 (3) (a) 2. to 6., 167.10 (3) (b) 1m., 167.10 (3) (em), 167.10 (3m), 167.10 (7)  
 7 (b), 167.10 (9) (bm), 167.10 (9) (bs) and 167.10 (9) (j) of the statutes; **relating**  
 8 **to:** the sale of fireworks; fireworks permits and displays; shipping fireworks;  
 9 fireworks wholesalers licenses; disposition of seized fireworks; fireworks  
 10 enforcement; granting rule-making authority; making an appropriation and  
 11 providing a penalty.

INSERT ANALYSIS

**Analysis by the Legislative Reference Bureau**

This bill makes numerous changes to the laws regulating the sale, use, and possession of fireworks.  
 This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

**BILL**

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* 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:*

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Review of Fireworks Law.

Fireworks Displays and Display Permits

Current law regulates the possession, use, sale, storage, handling, and manufacture of fireworks, as defined in s. 167.10 (1), stats. With certain exceptions, current law requires any person who possesses or uses 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 2 days before the date of use authorized in the permit. Current law does not specify who is required to give this copy to the fire or law enforcement official.

With limited exceptions, current law prohibits the sale of fireworks to any person who does not hold a fireworks permit. Only certain persons and entities may obtain a fireworks permit under current law. These include entities that typically put on fireworks displays, such as civic organizations, fair associations and amusement parks, and agricultural producers who want to use fireworks to protect crops from predatory birds and animals, and "a group of resident or nonresident individuals".

This bill makes numerous changes to the law pertaining to fireworks permits. These changes generally clarify that permits may be issued only for the purpose of putting on a fireworks display and may not be issued to individuals to buy fireworks for their personal use. Several of the newly created requirements for issuance of permits create new requirements for conducting fireworks displays. Specifically, the bill does the following:

1. Except for agricultural producers, repeals the list of entities to whom a permit may be issued and instead specifies that a permit may be issued to any person for the purpose of conducting a fireworks display if statutory requirements are met. The bill specifies that all outdoor displays must meet the requirements of National Fire Protection Association Standard NFPA 1123, Code for Fireworks Display, 1995 edition, approved by the American National Standards Institute.

The bill retains the provision that allows a municipality to issue a permit to an agricultural producer for the use of fireworks for crop protection and exempts agricultural producers from most of the permit requirements described below that apply to permits issued for fireworks displays.

2. Specifies that a person must obtain a fireworks display permit directly from the municipality that issues the permit and the municipal official or employee who issues a 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.

3. Specifies that a permit may only be issued for the purpose of a fireworks display and requires an application for a permit to identify a person certified by the Pyrotechnics Guild International who will be responsible for supervising the display.

**BILL**

4. Requires an application for a permit to be made at least 20 days before the proposed date of the fireworks display.

5. Specifies that the chief of the fire department providing fire protection to the city, village, or town issuing a permit must approve and sign the permit before it is issued. The fire chief must retain a copy of each permit that he or she approves and signs.

6. Specifies that a permit may not be issued unless: (a) the chief of the fire department providing fire protection to the city, village, or town issuing the permit, or a fire official designated by the chief, has conducted an on-site inspection of the area where fireworks are proposed to be displayed; (b) the person conducting the inspection determines that the proposed display does not pose a danger to public safety, after considering the proposed discharge site, the spectator viewing area, and the designated fallout area; and (c) the person conducting the inspection determines that there are adequate plans in place for fire protection and crowd control for the proposed display.

7. Requires the city, village, or town issuing a permit to send a copy of the permit to the Department of Commerce within 10 working days after it is issued.

8. Amends the law regarding proof of insurance of a permit applicant. Current law provides that a city, village, or town issuing a permit *may* require the person to whom a permit is granted to take out an indemnity bond or liability insurance policy in the name of the city, village, or town for payment of any claims that may arise from the fireworks display. The bill provides that the city, village, or town *must* require such a bond or policy to be taken. The bill also authorizes possession of fireworks by a person offering the fireworks for sale as authorized by law.

Shipping and Sales by Wholesalers to Persons "Outside of This State"

Currently, s. 167.10 (4), stats., states that: "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". That subsection specifies that a resident wholesaler or jobber that ships fireworks sold under the subsection must package and ship the fireworks in accordance with applicable state and federal law by motor carrier, contract motor carrier, or private motor carrier.

The bill deletes references to "jobbers" and provides that a licensed wholesaler may sell fireworks to a person who is *physically located* outside of this state *at the time the sale is made*. The provision in current law permitting the sale of fireworks to "a person outside of this state" was interpreted by the Wisconsin Court of Appeals in *State v. Victory Fireworks, Inc.*, 230 Wis.2d 721, 602 N.W.2d 128 (Ct. App. 1999). The court ruled that this provision does not permit the sale of fireworks within the state's boundaries to nonresidents. The court stated that the provision permits the sale of fireworks to a person who, at the time of the sale, is physically located outside of the boundaries of Wisconsin. The bill codifies that decision.

The bill also specifies that fireworks sold by a wholesaler must be transported by common motor carrier, a licensed wholesaler, or a person registered with the Department of Commerce to purchase fireworks at wholesale.

Wholesale Licenses

The bill contains several provisions regulating the wholesale sale of fireworks. The bill provides that no person may sell fireworks at wholesale without a fireworks wholesale license from the Department of Commerce and directs the department to promulgate rules governing the licensing of fireworks wholesalers. The rules must specify a license fee and enforcement procedures, including license suspension or revocation against a licensee who violates any state or federal laws or regulations governing fireworks.

The bill specifies that fireworks may be sold at wholesale only to another licensed fireworks wholesaler or a person who is registered with the Department of Commerce as a person engaged in the legal retail or wholesale sale of fireworks.

The department is directed to promulgate rules providing for annual registration of persons who wish to purchase fireworks at wholesale in this state. The rules must specify a registration fee and require a person wishing to register to provide proof, other

**BILL**

than a signed statement, that the person is engaged in the legal retail or wholesale sale of fireworks. The department is required to assign a registration number to each person who meets the requirements for registration.

The bill requires fireworks wholesalers to maintain a record of each sale of fireworks for 5 years. The record must include the name, address, and license or registration number of the purchaser, the date of purchase, and the amount and type of fireworks sold to the purchaser.

Disposition of Seized Fireworks

Under current law, fireworks that are stored, handled, sold, possessed, or used by a person who violates the state statutes regulating fireworks, a local ordinance regulating fireworks, or a court order enjoining violation of state law or local ordinance may be seized by a law enforcement officer.

Current law, in s. 968.20, stats., sets forth procedures to be followed for the return of seized property. The law provides for a court hearing to determine ownership of the property and, with certain exceptions, requires return of the property to its owner if it is not contraband and it is not needed as evidence or all proceedings in which it might be required have been completed. Under current law, seized fireworks are generally exempt from these procedures and instead the law provides that fireworks seized as evidence of a violation for which no conviction results must be returned to the owner in the same condition as they were when seized, to the extent practicable. The law also provides that only the fireworks that are the subject of a violation may be destroyed after conviction of a fireworks violation.

The bill repeals the special provisions described above pertaining to seized fireworks and instead makes seized fireworks subject to the procedures that apply to seized property in general.

Penalties and Enforcement

Under current law, a person who violates a state law or local ordinance pertaining to the sale, possession, use, or storage of fireworks is subject to a forfeiture of not more than \$1,000. A city, village, or town may petition the circuit court for an order enjoining violations of state law or a local ordinance pertaining to fireworks. A person who violates such a court order is subject to a fine of not more than \$10,000 or imprisonment of not more than 9 months, or both.

The bill makes the following changes to the penalty and enforcement provisions in the fireworks law:

1. Authorizes the district attorney of the county where violations relating to the sale, possession, use, or storage of fireworks occur or the attorney general to petition the circuit court for an order enjoining the violations.

2. Provides that the district attorney, the corporation counsel, or the attorney general may enforce an order enjoining violation of the laws regarding the sale, possession, use, or storage of fireworks.

3. Provides that a person who sells fireworks, or possesses fireworks with intent to sell them, in violation of the law may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both.

4. Provides that a person who is convicted of a second or subsequent violation of a state law pertaining to the possession, use, or storage of fireworks within 3 years of a previous violation is subject to a fine of not more than \$10,000 or imprisonment of not more than 9 months, or both.

5. Clarifies that it is an affirmative defense to prosecution for a violation of fireworks laws that an item which is the subject of the prosecution is exempt from the statutory definition of fireworks.

Liability

The bill provides that a person who sells fireworks in violation of state law may be held liable for any bodily injury to or death of others and for any damage to the property of others that is caused by the use of the fireworks.

**BILL**

1           **SECTION 1.** 20.143 (3) (j) of the statutes is amended to read:

2           20.143 (3) (j) *Safety and building operations.* The amounts in the schedule for  
3 the purposes of chs. 101, 145, and 168 and ss. 167.10, 236.12 (2) (a), 236.13 (1) (d) and  
4 (2m), and 236.335. All moneys received under ch. 145, ss. 101.177 (4) (a) 4., 101.178,  
5 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), 101.9205 (3), 101.9208 (1) (b),  
6 101.9213 (8), 101.935, 101.951 (2), 101.952 (2), 101.955 (2), 101.973 (7), 167.10 (3m),  
7 and 236.12 (7), and 2001 Wisconsin Act 16, section 9110 (3z), shall be credited to this  
8 appropriation.

NOTE: Adjusts the Department of Commerce's safety and building program revenue appropriation to account for the receipt and use of fireworks wholesaler license fees and wholesale purchaser registration fees.

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

10          167.10 (2) SALE. No A person may sell fireworks or possess fireworks with  
11 intent to sell fireworks, ~~except them only as follows:~~

12          (a) ~~To~~ Fireworks may be sold to a person holding a permit under sub. (3) (e); (a)  
13 or (3g).

14          (b) ~~To~~ Fireworks may be sold to a city, village, or town; or.

15          (c) ~~For~~ Fireworks may be sold for a purpose specified under sub. (3) (b) 2. to 6.

NOTE: Amends the law specifying to whom fireworks may be sold to incorporate new statutory numbering and insertion of the provision authorizing the wholesale sale of fireworks created in SECTION 16.

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

17          167.10 (2) (d) A fireworks wholesaler licensed under sub. (3m) (b) may sell  
18 fireworks to a person who is physically located outside of this state at the time the  
19 sale is made, at wholesale to a fireworks wholesaler licensed under sub. (3m) (b) or  
20 to a person registered with the department of commerce under sub. (3m) (c), or as  
21 authorized under pars. (a) to (c).

## BILL

NOTE: Specifically authorizes the wholesale sale of fireworks by a licensed wholesaler. Specifies that a wholesaler may sell fireworks to a person who is physically located outside of the state at the time the sale is made or to other authorized persons.

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

2 167.10 (3) (title) USE AND POSSESSION; DISPLAYS.

NOTE: Amends the title of s. 167.10 (3) to indicate that the subsection contains provisions pertaining to possession of fireworks and fireworks displays.

3 SECTION 5. 167.10 (3) (a) of the statutes is renumbered 167.10 (3) (a) 1. and  
4 amended to read:

5 167.10 (3) (a) 1. ~~No~~ Except as provided in par. (b) and sub. (3g), a person may  
6 possess or use fireworks without only for the purpose of conducting a display  
7 pursuant to a user's fireworks display permit obtained by the person directly from  
8 the mayor of the city, president of the village or chairperson of the town city, village,  
9 or town in which the possession or use display is to occur or from an official or  
10 employee of that municipality designated by the mayor, president or chairperson.  
11 ~~No person may use fireworks or a device listed under sub. (1) (e) to (g) or (i) to (n) while~~  
12 ~~attending a fireworks display for which a permit has been issued to a person listed~~  
13 ~~under par. (c) 1. to 5. or under par. (c) 6. if the display is open to the general public.~~  
14 A permit under this paragraph may be issued only by an official or employee of the  
15 city, village, or town at a location where he or she, in the normal course of municipal  
16 affairs, carries out his or her official responsibilities.

17 SECTION 6. 167.10 (3) (a) 2. to 6. of the statutes are created to read:

18 167.10 (3) (a) 2. An application for a permit under this paragraph shall be made  
19 at least 20 days before the proposed date of the fireworks display.

20 3. An application for a permit under this paragraph shall identify a person  
21 certified by the Pyrotechnics Guild International who will be responsible for

**BILL**

1 supervising the display. The application shall include the Pyrotechnics Guild  
2 International certification number of that person.

3 4. The chief of a fire department providing fire protection to the city, village,  
4 or town shall approve and sign each permit issued under this paragraph after par.  
5 (em) is satisfied, but before the permit is issued by the city, village, or town. The fire  
6 chief shall retain a copy of each permit that he or she approves and signs.

7 5. The city, village, or town issuing a permit under this paragraph shall send  
8 a copy of the permit to the department of commerce within 10 working days after it  
9 is issued.

10 6. No person may use fireworks or a device listed under sub. (1) (e) to (g) or (i)  
11 to (n) while attending a fireworks display that is open to the general public.

NOTE: Establishes various requirements relating to fireworks permits and clarifies that, except as provided in s. 167.10 (3) (b) and (3g), no person may possess or use fireworks except for the purpose of conducting a fireworks display.

12 **SECTION 7.** 167.10 (3) (b) 1m. of the statutes is created to read:

13 167.10 (3) (b) 1m. The possession of fireworks that are offered for sale as  
14 authorized under sub. (2) or (3m), by the person offering the fireworks for sale.

NOTE: Clarifies that person lawfully selling fireworks may possess them pending the sale.

15 **SECTION 8.** 167.10 (3) (c) (intro.) of the statutes renumbered 167.10 (3) (c) and  
16 is amended to read:

17 167.10 (3) (c) A permit under ~~this subsection~~ par. (a) may be issued only to the  
18 following: for the purpose of conducting a fireworks display. All outdoor displays  
19 shall meet the requirements of National Fire Protection Association standard NFPA  
20 1123, code for fireworks display, 1995 edition, approved by the American National  
21 Standards Institute.

## BILL

NOTE: Requires all outdoor fireworks displays to meet the requirements for outdoor displays established by the national fire protection association.

1       **SECTION 9.** 167.10 (3) (c) 1. to 7. of the statutes are repealed.

NOTE: Repeals provisions in current law that specify the entities to whom a fireworks user permit may be issued. Under the bill, any entity or person who meets the requirements for obtaining a permit is eligible to receive a permit.

2       **SECTION 10.** 167.10 (3) (d) of the statutes is renumbered 167.10 (3g) and  
3 amended to read:

4       167.10 (3g) In addition to permits under sub. (3), a city, village, or town may  
5 issue a permit authorizing an agricultural producer to purchase, possess, and use  
6 fireworks for the protection of crops from predatory birds or animals. The city,  
7 village, or town shall provide a copy of any permit issued under this subsection to the  
8 chief of a fire department providing fire protection to the city, village, or town. A  
9 permit may not be issued under this subsection to a minor. A person issued a permit  
10 for crop protection under the subsection shall erect appropriate warning signs  
11 disclosing the use of fireworks for crop protection.

NOTE: Authorizes a municipality to issue a permit authorizing an agricultural producer to purchase, possess, and use fireworks to protect crops from predatory birds or animals.

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

13       167.10 (3) (e) The ~~person~~ city, village, or town issuing a permit under this  
14 subsection may ~~par. (a) shall~~ require an indemnity bond with good and sufficient  
15 sureties or policy of liability insurance for the payment of all claims that may arise  
16 by reason of injuries to person or property from the handling, use, or discharge of  
17 fireworks under the permit. The bond or policy, ~~if required,~~ shall be taken in the  
18 name of the city, village, or town wherein the fireworks are to be used, and any person  
19 injured thereby may bring an action on the bond or policy in the person's own name  
20 to recover the damage the person has sustained, but the aggregate liability of the

**BILL**

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

NOTE: Requires a municipality issuing a fireworks permit to require a permit recipient to take out a bond or insurance policy for payment of claims that may arise from the fireworks display.

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

5 167.10 (3) (em) A permit under par. (a) may be issued only if all of the following  
6 apply:

7 1. The chief of a fire department providing fire protection to the city, village,  
8 or town issuing the permit, or a fire official designated by the chief, has conducted  
9 an on-site inspection of the area where the fireworks are proposed to be displayed.

10 2. The person conducting the inspection under subd. 1. determines, after  
11 considering the proposed discharge site, spectator viewing area, and designated  
12 fallout area, that the proposed display does not pose a danger to public safety.

13 3. The person conducting the inspection under subd. 1. determines that there  
14 are adequate plans in place for fire protection and crowd control for the proposed  
15 display.

NOTE: Requires a fire chief or official to inspect the site of a proposed fireworks display to determine that the proposed display does not pose a danger to public safety.

16 **SECTION 13.** 167.10 (3) (f) (intro.) and 4. of the statutes are amended to read:

17 167.10 (3) (f) (intro.) A permit under ~~this subsection~~ par. (a) shall specify all of  
18 the following:

19 4. The date and location of ~~permitted use~~ the event at which the fireworks  
20 purchased pursuant to the permit will be displayed.

NOTE: Requires a fireworks permit to specify the date and location of the event at which the fireworks purchased pursuant to the permit will be displayed.

21 **SECTION 14.** 167.10 (3) (g) of the statutes is repealed.

## BILL

NOTE: Repeals provision requiring municipal fire official to receive copy of permit because that requirement will exist under s. 167.10 (3) (a) 4. and (3g).

1           **SECTION 15.** 167.10 (3) (h) of the statutes is amended to read:

2           167.10 (3) (h) A permit under this ~~subsection~~ par. (a) may not be issued to a  
3 minor.

4           **SECTION 16.** 167.10 (3m) of the statutes is created to read:

5           167.10 (3m) WHOLESALE LICENSES; REGISTRATION OF WHOLESALE PURCHASERS. (a)  
6 In this subsection, "wholesale" means the sale of fireworks to a fireworks wholesaler  
7 who is licensed in this state or to a person who is registered with the department of  
8 commerce under par. (c).

9           (b) 1. No person may sell fireworks at wholesale in this state without a  
10 fireworks wholesale license from the department of commerce.

11           2. Application for a fireworks wholesale license shall be made upon forms  
12 furnished upon request by the department of commerce. The application shall state  
13 the applicant's name and business address, a description of the products that are to  
14 be sold, and any other relevant information that the department requires.

15           3. A licensed fireworks wholesaler shall maintain a record of each sale of  
16 fireworks for 5 years. The record shall include the name, address, and license or  
17 registration number of the purchaser, the date of purchase, and the amount and type  
18 of fireworks sold to the purchaser.

19           (c) The department of commerce shall promulgate rules governing the licensing  
20 of fireworks wholesalers and annual registration of wholesale purchasers. The rules  
21 shall require an applicant for registration to provide proof, other than a signed  
22 statement, that the person is engaged in the legal retail or wholesale sale of  
23 fireworks. The department shall assign a registration number to each person

**BILL**

1 meeting the requirements for registration. The rules shall specify a license and  
2 registration fee and enforcement procedures, including license suspension or  
3 revocation against a licensee who violates this section or any other state or federal  
4 laws or regulations pertaining to fireworks.

NOTE: Creates a new section regulating the wholesale sale of fireworks. Requires wholesalers to be licensed by the Department of Commerce and wholesale purchasers to be registered with the department. Requires wholesalers to maintain records of sales and authorizes the department to promulgate rules governing wholesale licensing and registration

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

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

NOTE: Specifies how fireworks sold by a wholesaler are to be shipped.

16 **SECTION 18.** 167.10 (7) (title) of the statutes is repealed and recreated to read:

17 167.10 (7) (title) **LIABILITY.**

18 **SECTION 19.** 167.10 (7) of the statutes is renumbered 167.10 (7) (a).

19 **SECTION 20.** 167.10 (7) (b) of the statutes is created to read:

## BILL

1           167.10 (7) (b) A person who sells fireworks in violation of sub. (2) may be held  
2           liable for any bodily injury to or death of others and for any damage to the property  
3           of others that is caused by the use of the fireworks.

NOTE: Specifies that a person who sells fireworks in violation of state law may be held liable for damage, injury, or death caused by the fireworks.

4           **SECTION 21.** 167.10 (8) (a) and (b) of the statutes are amended to read:

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

11          (b) Fireworks stored, handled, sold, possessed, or used by a person who violates  
12          this section, an ordinance adopted under sub. (5) or a court order under par. (a) may  
13          be seized and held as evidence of the violation. ~~Except as provided in s. 968.20 (4),~~  
14          ~~only the fireworks that are the subject of a violation of this section, an ordinance~~  
15          ~~adopted under sub. (5) or a court order under par. (a) may be destroyed after~~  
16          ~~conviction for a violation. Except as provided in s. 968.20 (4), fireworks that are~~  
17          ~~seized as evidence of a violation for which no conviction results shall be returned to~~  
18          ~~the owner in the same condition as they were when seized to the extent practicable.~~

NOTE: Authorizes district attorneys and the attorney general to seek injunctions against violations of fireworks laws and authorizes them and corporation counsel to enforce injunctions. Repeals certain provisions regarding the disposition of seized fireworks.

19          **SECTION 22.** 167.10 (9) (b) of the statutes is amended to read:

20          167.10 (9) (b) A person who violates sub. (2), (3) or (6) ~~or an ordinance adopted~~  
21          ~~under sub. (5) shall~~ may be required to forfeit not more than \$1,000, except that a

**BILL**

1 person who violates sub. (3) or (6) may be fined not more than \$10,000 or imprisoned  
2 for not more than 9 months or both, for any violation within 3 years of a previous  
3 violation.

NOTE: Creates an enhanced penalty for repeat violation of laws governing the use, possession, or storage of fireworks.

4 **SECTION 23.** 167.10 (9) (bm) of the statutes is created to read:

5 167.10 (9) (bm) A person who violates sub. (2) may be fined not more than  
6 \$10,000 or imprisoned for not more than 9 months or both.

NOTE: Increases the penalty for illegal sales of fireworks to a fine of not more than \$10,000, imprisonment for not more than 9 months or both.

7 **SECTION 24.** 167.10 (9) (bs) of the statutes is created to read:

8 167.10 (9) (bs) A person who violates an ordinance adopted under sub. (5) may  
9 be required to forfeit not more than \$1,000.

NOTE: Specifies the penalty for violation of an ordinance governing fireworks, which remains the same as under current law.

10 **SECTION 25.** 167.10 (9) (j) of the statutes is created to read:

11 167.10 (9) (j) It is an affirmative defense to prosecution for a violation of this  
12 section that an item which is the subject of the prosecution is not included in the  
13 definition of "fireworks" under sub. (1).

NOTE: Specifies that it is an affirmative defense to prosecution for a fireworks law violation that an item is not included in the statutory definition of fireworks.

14

(END)

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2585/lins  
RJM:.....

INSERT ANALYSIS

With limited exceptions, current law prohibits the sale of regulated fireworks to any person who does not hold a fireworks user's permit issued by the city, village, or town (municipality) in which the possession or use of the fireworks will occur. Currently, a fireworks user's permit may be obtained only by a public authority, fair association, amusement park, park board, civic organization, agricultural producer (for the protection of crops from predatory birds or animals) or group of resident or nonresident individuals. One current exception to the fireworks user's permit requirement authorizes a resident wholesaler to sell regulated fireworks "to a person outside of this state," even if the person does not hold a permit. In *State v. Victory Fireworks, Inc.*, 230 Wis. 2nd 721 (Ct. App. 1999), the court of appeals held that this exception permits a sale only to a person who is physically located outside of this state. ✓ ←

Current law authorizes the mayor, president, or chairperson of a municipality, or other designated municipal official or employee, to issue a fireworks user's permit. The municipality may require a person obtaining a fireworks user's permit to take out an indemnity bond or liability insurance policy in the name of the municipality for payment of any claims that may arise from the use of the fireworks. Under current law, a fire or law enforcement official of the municipality must be given a copy of a fireworks user's permit at least 2 days before the date of use authorized in the permit. Current law does not specify who is required to give this copy to the fire or law enforcement official. (two)

Under current law, a law enforcement officer may seize fireworks that are stored, handled, sold, possessed, or used by a person who violates the fireworks laws, a local ordinance regulating fireworks, or a court order enjoining violation of such a law or ordinance. Current law also sets forth procedures that generally must be followed for the return of seized property. The law provides for a court hearing to determine ownership of the property and, with certain exceptions, requires return of the property to its owner if it is not contraband and it is not needed as evidence or all proceedings in which it might be required have been completed. Currently, seized fireworks are generally exempt from these procedures. Instead, fireworks seized as evidence of a violation for which no conviction results must be returned to the owner in the same condition as they were when seized, to the extent practicable.

→ In addition, only the fireworks that are the subject of a violation may be destroyed after conviction of a fireworks violation.

Currently, a person who violates a state law or local ordinance pertaining to the sale, possession, use, or storage of fireworks is subject to a forfeiture of not more than \$1,000. In addition, a municipality may petition the circuit court for an order enjoining violations of these fireworks laws or a local ordinance pertaining to fireworks. A person who violates such a court order is subject to a fine of not more than \$10,000 or imprisonment of not more than 9 months, or both. ✓

This bill makes numerous changes to the laws governing fireworks. Significant changes include the following:

nine

***Fireworks user's permits and fireworks displays***

This bill generally repeals the current law with regard to fireworks user's permits, including the list of entities to whom a such a permit may be issued, and instead specifies that, with limited exceptions, fireworks may be sold only to a person who holds a fireworks display permit issued by the municipality in which the fireworks display will occur. A person may obtain a fireworks display permit only for the purpose of conducting a fireworks display and only if statutory requirements are met. The bill specifies that all outdoor displays must meet the requirements of National Fire Protection Association Standard NFPA 1123, Code for Fireworks Display, 1995 edition, approved by the American National Standards Institute. The bill retains the provision that allows a municipality to issue a fireworks user's permit to an agricultural producer for the use of fireworks for crop protection and exempts agricultural producers from most of the permit requirements that apply to fireworks display permits.

The bill specifies that a person must obtain a fireworks display permit directly from the municipality that issues the permit and requires the municipal official or employee who issues a fireworks permit to 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. Under the bill, a fireworks display permit may be issued only for the purpose of conducting a fireworks display. The bill requires an application for a permit to identify a person certified by the Pyrotechnics Guild International who will be responsible for supervising the display. Under the bill, a municipality must require the person obtaining a fireworks display permit to take out an indemnity bond or liability insurance policy in the name of the municipality for payment of any claims that may arise from the fireworks display. The bill requires an application for a fireworks display permit to be made at least 20 days before the proposed date of the fireworks display and requires the municipality to send a copy of each permit to the Department of Commerce (department) within ten working days after the permit is issued.

The bill also includes requirements relating to fire protection. The bill specifies that the chief of a fire department providing fire protection services to the city, village, or town issuing a fireworks display permit must approve and sign the permit before it is issued. The fire chief must retain a copy of each permit that he or she approves and signs. The bill further specifies that a fireworks display permit may not be issued unless: (a) the chief of the fire department or a fire official designated by the chief has conducted an on-site inspection of the area where the fireworks are proposed to be displayed; (b) the person conducting the inspection determines that the proposed display does not pose a danger to public safety, after considering the proposed discharge site, the spectator viewing area, and the designated fallout area; and (c) the person conducting the inspection determines that there are adequate plans in place for fire protection and crowd control for the proposed display.

***Fireworks wholesalers***

The bill contains several provisions regulating the sale of fireworks by wholesalers. Under the bill, no person may sell fireworks at wholesale without a fireworks wholesale license from the department. The bill directs the department

to promulgate rules governing the licensing of fireworks wholesalers. The rules must specify a license fee and enforcement procedures, including license suspension or revocation procedures applicable to licensees who violate any state or federal laws or regulations governing fireworks. ✓

The bill allows a licensed fireworks wholesaler to sell fireworks to any person otherwise authorized to purchase fireworks, to another licensed fireworks wholesaler, or to a person who is registered with the department as a person engaged in the legal retail or wholesale sale of fireworks. The bill also codifies the decision of the court in *State v. Victory Fireworks, Inc.* and provides that a licensed wholesaler may sell fireworks to any person who is physically located outside of this state at the time the sale is made, even though the person does not hold a permit. In addition, if a licensed wholesaler ships fireworks sold under the bill, the fireworks must be transported by common motor carrier, a licensed fireworks wholesaler, or a person registered with the department to purchase fireworks at wholesale. The bill requires a fireworks wholesaler to maintain a specified record of each sale of fireworks for ~~the~~ years. ✓

Under the bill, the department must promulgate rules providing for annual registration of persons who wish to purchase fireworks at wholesale in this state. The rules must specify a registration fee and require a person wishing to register to provide proof, other than a signed statement, that the person is engaged in the legal retail or wholesale sale of fireworks. The department is required to assign a registration number to each person who meets the requirements for registration. ✓

**Penalties and enforcement**

The bill makes the following changes to the penalty and enforcement provisions in the fireworks law:

1. Authorizes the district attorney of the county where a violation relating to the sale, possession, use, or storage of fireworks occurs, or the attorney general, to petition the circuit court for an order enjoining the violation. ✓

2. Provides that the district attorney, the county's corporation counsel, or the attorney general may enforce an order enjoining violation of the laws regarding the sale, possession, use, or storage of fireworks. ✓

3. Provides that a person who sells fireworks, or possesses fireworks with intent to sell them, in violation of the law may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both. ✓

4. Provides that a person who is convicted of a second or subsequent violation of a state law pertaining to the possession, use, or storage of fireworks within 9 years of a previous violation is subject to a fine of not more than \$10,000 or imprisonment of not more than 9 months, or both. ✓

5. Clarifies that it is an affirmative defense to prosecution for a violation of fireworks laws that an item which is the subject of the prosecution is exempt from the statutory definition of fireworks. ✓

**Other changes**

The bill provides that a person who sells fireworks in violation of the fireworks laws may be held liable for any bodily injury to or death of others and for any damage to the property of others that is caused by the use of the fireworks. ✓

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Five

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✓

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✓

three

✓

nine →

→

The bill also repeals the special treatment of fireworks seized by a law enforcement official and instead makes these fireworks subject to the procedures that generally apply to seized property. ✓

*Law no 7*

**Emery, Lynn**

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**From:** Gaston, Geoff  
**Sent:** Friday, June 06, 2003 3:28 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-2585/1 Topic: Fireworks

It has been requested by <Gaston, Geoff> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-2585/1 Topic: Fireworks