

2007 ASSEMBLY BILL 380

May 31, 2007 – Introduced by Representatives KERKMAN, STEINBRINK, ALBERS, LOTHIAN, ZEPNICK and A. OTT, cosponsored by Senators OLSEN and HANSEN. Referred to Committee on Tourism, Recreation and State Properties.

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

Analysis by the Legislative Reference Bureau

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,

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or town (municipality) in which the possession or use of the fireworks will occur. Currently, only 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 may obtain a fireworks user's permit. 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. 2d 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 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 two days before the date of use authorized in the permit.

Under current law, a law enforcement officer may seize fireworks from a person who violates the fireworks laws. Current law also sets forth procedures that generally must be followed for the return of seized property. Among those procedures is a hearing requirement to determine ownership of the property. 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 when they were 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 nine months, or both.

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

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 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 certain National Fire Protection Association standards. The bill retains the provision that allows a municipality to issue a fireworks user's permit to an agricultural producer for the use

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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. 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 also includes requirements relating to fire protection. The bill specifies that the chief of a fire department providing fire protection services to the municipality issuing a fireworks display permit must approve and sign the permit before it is issued. 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; 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 of Commerce (department). The bill directs the department to promulgate rules governing the licensing of fireworks wholesalers.

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, 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 five years.

Under the bill, the department must promulgate certain rules providing for annual registration of persons who wish to purchase fireworks at wholesale in this state.

Penalties and enforcement

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

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1. Authorizes the appropriate district attorney 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 fireworks laws.

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 nine 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 three years of a previous violation is subject to a fine of not more than \$10,000 or imprisonment of not more than nine 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.

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.

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:

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), 101.955 (2), 101.973 (7),
6 167.10 (3m), and 236.12 (7), except moneys received under s. 101.9208 (2m), and all

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1 moneys transferred under 2005 Wisconsin Act 45, section 76 (6), shall be credited to
2 this appropriation.

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

4 167.10 (2) SALE. (intro.) ~~No~~ Except as provided under sub. (2m), no person may
5 sell or possess with intent to sell fireworks, ~~except unless any of the following apply:~~

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

7 167.10 (2) (a) ~~To a~~ The person holding sells the fireworks to the holder of a
8 permit under sub. (3) (e); (a) or (3g).

9 **SECTION 4.** 167.10 (2) (b) of the statutes is amended to read:

10 167.10 (2) (b) ~~To~~ The person sells the fireworks to a city, village or town; or,

11 **SECTION 5.** 167.10 (2) (c) of the statutes is amended to read:

12 167.10 (2) (c) ~~For~~ The person sells fireworks for a purpose specified under sub.
13 (3) (b) 2. to 6.

14 **SECTION 6.** 167.10 (2m) of the statutes is created to read:

15 167.10 (2m) WHOLESALE SALES EXCEPTIONS. A fireworks wholesaler licensed
16 under sub. (3m) (a) may sell fireworks to a person who is physically located outside
17 of this state at the time the sale is made, at wholesale to a fireworks wholesaler
18 licensed under sub. (3m) (a) or to a person registered with the department of
19 commerce under sub. (3m) (b), or as authorized under sub. (2) (a) to (c).

20 **SECTION 7.** 167.10 (3) (title) of the statutes is amended to read:

21 167.10 (3) (title) USE AND POSSESSION; DISPLAYS.

22 **SECTION 8.** 167.10 (3) (a) of the statutes is renumbered 167.10 (3) (a) 1. and
23 amended to read:

24 167.10 (3) (a) 1. ~~No~~ Except as provided in par. (b) and sub. (3g), a person may
25 possess or use fireworks without only for the purpose of conducting a display

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1 ~~pursuant to a user's fireworks display permit obtained by the person directly from~~
2 ~~the mayor of the city, president of the village or chairperson of the town city, village,~~
3 ~~or town in which the possession or use display is to occur or from an official or~~
4 ~~employee of that municipality designated by the mayor, president or chairperson.~~
5 ~~No person may use fireworks or a device listed under sub. (1) (e) to (g) or (i) to (n) while~~
6 ~~attending a fireworks display for which a permit has been issued to a person listed~~
7 ~~under par. (c) 1. to 5. or under par. (c) 6. if the display is open to the general public.~~
8 An official or employee of a city, village, or town may issue a permit under this
9 paragraph only at a location where he or she, in the normal course of municipal
10 affairs, carries out his or her official responsibilities.

11 **SECTION 9.** 167.10 (3) (a) 2. to 6. of the statutes are created to read:

12 167.10 (3) (a) 2. A person applying for a permit under this paragraph shall
13 submit the application at least 20 days before the proposed date of the fireworks
14 display.

15 3. A person applying for a permit under this paragraph shall identify a person
16 certified by the Pyrotechnics Guild International who will be responsible for
17 supervising the display and shall include the Pyrotechnics Guild International
18 certification number of that person on the application.

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

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

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

3 **SECTION 10.** 167.10 (3) (b) 1m. of the statutes is created to read:

4 167.10 (3) (b) 1m. The possession of fireworks that are offered for sale as
5 authorized under sub. (2) or (3m), by the person offering the fireworks for sale.

6 **SECTION 11.** 167.10 (3) (c) (intro.) of the statutes renumbered 167.10 (3) (c) and
7 is amended to read:

8 167.10 (3) (c) A permit under ~~this subsection~~ par. (a) may be issued only ~~to the~~
9 following: for the purpose of conducting a fireworks display. No person may conduct
10 an outdoor fireworks display unless the display meets the requirements of National
11 Fire Protection Association standard NFPA 1123, Code for Fireworks Display, 1995
12 edition, approved by the American National Standards Institute.

13 **SECTION 12.** 167.10 (3) (c) 1. to 7. of the statutes are repealed.

14 **SECTION 13.** 167.10 (3) (d) of the statutes is renumbered 167.10 (3g) and
15 amended to read:

16 167.10 (3g) In addition to permits under sub. (3), a city, village, or town may
17 issue a permit authorizing an agricultural producer to purchase, possess, and use
18 fireworks for the protection of crops from predatory birds or animals. The city,
19 village, or town shall provide a copy of any permit issued under this subsection to the
20 chief of a fire department providing fire protection to the city, village, or town. A
21 permit may not be issued under this subsection to a minor. A person issued a permit
22 for crop protection under this subsection shall erect appropriate warning signs
23 disclosing the use of fireworks for crop protection.

24 **SECTION 14.** 167.10 (3) (e) of the statutes is amended to read:

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

12 **SECTION 15.** 167.10 (3) (em) of the statutes is created to read:

13 167.10 (3) (em) A city, village, or town may issue a permit under par. (a) only
14 if all of the following apply:

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

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

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

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

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1 167.10 (3) (f) (intro.) A permit under ~~this subsection~~ par. (a) shall specify all of
2 the following:

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

5 **SECTION 17.** 167.10 (3) (g) of the statutes is repealed.

6 **SECTION 18.** 167.10 (3) (h) of the statutes is amended to read:

7 167.10 (3) (h) A permit under ~~this subsection~~ par. (a) may not be issued to a
8 minor.

9 **SECTION 19.** 167.10 (3m) of the statutes is created to read:

10 167.10 (3m) WHOLESALE LICENSES; REGISTRATION OF WHOLESALE PURCHASERS. (a)

11 1. No person may sell fireworks in this state to a fireworks wholesaler who is licensed
12 in this state or to a person who is registered with the department of commerce under
13 par. (b) without a fireworks wholesale license from the department of commerce.

14 2. An applicant for a fireworks wholesale license shall file the application upon
15 forms that are furnished upon request by the department of commerce. The
16 application shall state the applicant's name and business address, a description of
17 the products that are to be sold, and any other relevant information that the
18 department requires.

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

23 (b) The department of commerce shall promulgate rules governing the
24 licensing of fireworks wholesalers and the annual registration of wholesale
25 purchasers. The rules shall require an applicant for registration to provide proof,

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1 other than a signed statement, that the person is engaged in the legal retail or
2 wholesale sale of fireworks. The department shall assign a registration number to
3 each person meeting the requirements for registration. The rules shall specify a
4 license and registration fee and enforcement procedures, including a procedure for
5 the suspension or revocation of a license held by a licensee who violates this section
6 or any other state or federal laws or regulations pertaining to fireworks.

7 **SECTION 20.** 167.10 (4) of the statutes is amended to read:

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

18 **SECTION 21.** 167.10 (7) (title) of the statutes is repealed and recreated to read:

19 167.10 (7) (title) LIABILITY.

20 **SECTION 22.** 167.10 (7) of the statutes is renumbered 167.10 (7) (a).

21 **SECTION 23.** 167.10 (7) (b) of the statutes is created to read:

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

25 **SECTION 24.** 167.10 (8) (a) and (b) of the statutes are amended to read:

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1 167.10 **(8)** (a) A city, village, or town may petition the circuit court for an order
2 enjoining violations of sub. (2), (3), or (6) or an ordinance adopted under sub. (5)
3 within the municipality. A district attorney of a county where violations of sub. (2),
4 (3), or (6) occur or the attorney general may petition the circuit court for an order
5 enjoining the violations. The district attorney, the corporation counsel, or the
6 attorney general may enforce an order under this subsection.

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

15 **SECTION 25.** 167.10 (9) (b) of the statutes is amended to read:

16 167.10 **(9)** (b) A person who violates sub. (2), (3) or (6) ~~or an ordinance adopted~~
17 ~~under sub. (5) shall~~ may be required to forfeit not more than \$1,000, except that a
18 person who violates sub. (3) or (6) may be fined not more than \$10,000 or imprisoned
19 for not more than 9 months or both, for any violation within 3 years of a previous
20 violation.

21 **SECTION 26.** 167.10 (9) (bm) of the statutes is created to read:

22 167.10 **(9)** (bm) A person who violates sub. (2) may be fined not more than
23 \$10,000 or imprisoned for not more than 9 months or both.

24 **SECTION 27.** 167.10 (9) (bs) of the statutes is created to read:

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

3 **SECTION 28.** 167.10 (9) (j) of the statutes is created to read:

4 167.10 (9) (j) It is an affirmative defense to prosecution for a violation of this
5 section that an item that is the subject of the prosecution does not fall within the
6 scope of the definition of “fireworks” under sub. (1).

7 **(END)**