

2009 DRAFTING REQUEST

Bill

Received: **11/03/2008**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - LRC**

By/Representing: **Don Dyke**

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

Drafter: **rkite**

May Contact:

Addl. Drafters:

Subject: **Buildings/Safety - fire safety**

Extra Copies:

Submit via email: **YES**

Requester's email: **don.dyke@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Labeling of packages with hazardous substances

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>
/?	rkite 11/03/2008	jdyer 11/04/2008		_____			
/P1			jfrantze 11/04/2008	_____	sbasford 11/04/2008		
/1	rkite 12/29/2009	jdyer 01/04/2010	phenry 01/04/2010	_____	cduerst 01/04/2010	mbarman 01/05/2010	

FE Sent For: **NONE**

<END>

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1?	rkite	<i>PI 11/4 jld</i>	<i>Jo Salb</i>	<i>11/4</i>			

FE Sent For:

<END>

10/31/08

Department of Commerce memo -
from Richard Leinenkugel, Secretary
Law Revision proposal

RNK

2. Labeling of Packages With Hazardous Substances

A. Requested Change

The Department requests the repeal of s. 167.11, Stats., and the deletion of references to it in ss. 20.143 (3) (a) and (ma) and 560.01 (2) (b), Stats.

B. Problem

Section 167.11, Stats.: (1) prohibits the sale and distribution of packages of spontaneously combustible organic substances, unless the packages have an adequate warning label; and (2) requires the Department to establish and enforce rules for this labeling. This section is outdated and duplicative because the labeling and handling of these substances are now regulated adequately and more effectively by the Department and other agencies under other, more recent statutory and federal criteria.

C. Need for the Change

This law was enacted in the early 1960's in reaction to an incident involving the inappropriate use of a chlorine-based swimming pool sanitizer. These types of sanitizers are now classified as pesticides – Section 94.681 (1) (b) 2., Stats., “for use in controlling algae, fungi, bacteria [and] other microscopic organisms.” Section 94.676 (7), Stats., addresses misbranded pesticides as not containing “a warning or caution statement which may be necessary and which, if complied with, is adequate to protect health and the environment.” Section ATCP 33.10, Wisconsin Administrative Code, addresses the labeling of storage containers for such pesticides, and requires this labeling to comply with the federal Insecticide, Fungicide and Rodenticide Act – 7 USC 136 et seq. – and with regulations issued under that Act.

Chemical-based swimming pool sanitizers are also classified as oxidizers – and the storage, handling and use of oxidizers are regulated through Chapter Comm 14, Wisconsin Administrative Code, by either the National Fire Protection Association's NFPA 1 Uniform Fire Code™ or the International Fire Code®. In addition, the design and construction of public buildings and places of employment, which include such oxidizers, are regulated through Chapters Comm 60 to 66, Wisconsin Administrative Code, by the International Building Code® and the International Fire Code.

As a consequence of these statutory and administrative actions that have occurred subsequent to the enactment of s. 167.11, Stats., packages containing these substances currently are required to be adequately labeled – and adequately stored, handled and used – without having labeling rules established by the Department of Commerce. If the Department proceeded to establish such rules in order to comply with section 167.11, the rules would be duplicative of the ATCP rules, which would needlessly cause confusion and disruption.

D. Fiscal Effect

No fiscal effect is expected from this change. Current revenues and expenditures would not be affected.

E. Other

This proposal does not involve any significant policy change, and no public- or private-sector groups are expected to oppose this proposal. The Department of Agriculture, Trade and Consumer Protection is expected to support this proposal.

F. Prior Sessions

The Department of Commerce requested this change in the 2007-2009 legislative session; however, the proposal did not include some of the above information describing the need for the change. The preliminary legislative draft (paper copy) that the Legislative Reference Bureau prepared in conjunction with that request is attached.

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LRB-0818/PL
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS-
PWF
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In 11/3

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Gen

1 AN ACT *to repeal* 167.11; and *to amend* 20.143 (3) (a), 20.143 (3) (ma) and 560.01
2 (2) (b) of the statutes; **relating to:** labeling requirements for certain substances
3 that may create a fire hazard when mixed with organic matter (suggested as
4 remedial legislation by the Department of Commerce).

Analysis by the Legislative Reference Bureau

Current law prohibits any person from selling or distributing a package of a substance that, when mixed with organic matter, will cause spontaneous combustion under reasonably anticipated conditions of use or handling unless the package bears a label warning that the substance will create a fire hazard when mixed with organic matter. This bill repeals that prohibition.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Commerce and introduced by the Law Revision Committee under s. 13.83 (1) (c) 1. and 5., as a result of the Revisor of Statutes' case and opinion review under s. 13.93 (2) (d), stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

→ INSERT A

1 **SECTION 1.** 20.143 (3) (a) [✓] of the statutes is amended to read:

2 20.143 (3) (a) *General program operations.* The amounts in the schedule for
3 general program operations relating to the regulation of industry, buildings and
4 safety under chs. 101, 107, 145 and 168 and ss. 32.19 to 32.27, 167.10, [✓] ~~167.11~~ and
5 167.27.

6 **SECTION 2.** 20.143 (3) (ma) [✓] of the statutes is amended to read:

7 20.143 (3) (ma) *Federal aid-program administration.* All moneys received
8 from the federal government, as authorized by the governor under s. 16.54, to fund
9 the state's administrative costs for general program operations relating to the
10 regulation of industry, buildings and safety under chs. 101, 107, 145 and 168 and ss.
11 32.19 to 32.27, 167.10, [✓] ~~167.11~~ and 167.27.

12 **SECTION 3.** 167.11 [✓] of the statutes is repealed.

13 **SECTION 4.** 560.01 (2) (b) [✓] of the statutes is amended to read:

14 560.01 (2) (b) *Regulation of industry, buildings and safety.* The department
15 shall administer and enforce laws regulating industry, safety and buildings under
16 chs. 101, 107, 145 and 168 and ss. 32.19 to 32.27, 167.10, [✓] ~~167.11~~ and 167.27 and as
17 otherwise provided by statute.

18

(END)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0631/?ins
RNK:.....

INSERT A

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Commerce and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

(end ins)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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Kite, Robin

From: Dyke, Don
Sent: Tuesday, December 29, 2009 10:22 AM
To: Kite, Robin
Subject: RE: LRB-0631

Robin,
Thanks for the close reading. I think it appropriate to substitute the correct reference as long as it's bracketed.
Don

From: Kite, Robin
Sent: Tuesday, December 29, 2009 9:55 AM
To: Dyke, Don
Subject: LRB-0631

Don:

I am redrafting the referenced draft as a /1 but noticed a minor error in the Note. In the first paragraph of the "rationale" language (last sentence of that paragraph), there is a reference to "Section ATCP 33.10" which I think should be 33.01. Given that this is language comes from a Commerce memo, I did not want to make this change before making sure that I could do so. Let me know if I can make that change.

Thanks.

Robin

Robin Kite, Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
(608) 266-7291



(soon)
State of Wisconsin
2009 - 2010 LEGISLATURE

RM run
1
LRB-0631/PF
RNK:jld:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

✓ Regen

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INSERT A

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NOTE: The Department of Commerce reports that the repealed section is outdated and duplicative because the labeling and handling of spontaneously combustible organic substances are now regulated adequately and more effectively by the Department of Commerce and other agencies under more recent statutes and federal law. In its request to the Law Revision Committee for this remedial legislation, the Department of Commerce summarized the rationale for the requested repeal as follows:

indented + single space

This law was enacted in the early 1960s in reaction to an incident involving the inappropriate use of chlorine-based swimming pool sanitizer. These types of sanitizers are now classified as pesticides – Section 94.681 (1) (b) 2., Stats., “for use in controlling algae, fungi, bacteria [and] other microscopic organisms.” Section 94.676 (7), Stats., addresses misbranded pesticides as not containing “a warning or caution statement which may be necessary and which, if complied with, is adequate to protect health and the environment.” Section ATCP 33.10, Wisconsin Administrative Code, addresses the labeling of storage containers for such pesticides, and requires this labeling to comply with the federal insecticide, Fungicide and Rodenticide Act – 7 USC 136 et seq. – and with regulations issued under that Act.

[33.01]

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- *
- *
- *

of Commerce

Stats.)

(end ins A)

Barman, Mike

From: Dyke, Don
Sent: Tuesday, January 05, 2010 8:48 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-0631/1 Topic: Labeling of packages with hazardous substances

Please Jacket LRB 09-0631/1 for the SENATE.
Thanks,
Don Dyke