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83 WisACT 446

1983 Senate Bill 170

Date of enactment: **May 10, 1984**

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1983 Wisconsin Act 446

AN ACT to repeal and recreate 167.10; and to create 101.19 (1) (j) of the statutes, relating to regulation of fireworks, granting rule-making authority and changing penalties.

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

SECTION 1. 101.19 (1) (j) of the statutes is created to read:

101.19 (1) (j) The licensing and inspection of fireworks manufacturers under s. 167.10 (6m).

SECTION 1m. 167.10 of the statutes is repealed and recreated to read:

167.10 Regulation of fireworks. (1) DEFINITION. In this section, "fireworks" means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:

- (a) Fuel or a lubricant.
- (b) A firearm cartridge or shotgun shell.
- (c) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
- (d) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
- (e) A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
- (f) A toy snake which contains no mercury.
- (g) A model rocket engine.
- (h) Tobacco and a tobacco product.
- (i) A sparkler on a wire or wood stick not exceeding 36 inches in length or 0.25 inch in outside diameter which does not contain magnesium, chlorate or perchlorate.
- (j) A device designed to spray out paper confetti or streamers and which contains less than one-quarter grain of explosive mixture.
- (k) A device designed to produce an audible sound but not explode, spark, move or emit an external flame after ignition and which does not exceed 3 grams in total weight.
- (L) A device that emits smoke with no external flame and does not leave the ground.
- (m) A cylindrical fountain not exceeding 100 grams in total weight with an inside tube diameter not exceeding 0.75 inch, designed to sit on the ground and emit only sparks and smoke.
- (n) A cone fountain not exceeding 75 grams in total weight, designed to sit on the ground and emit only sparks and smoke.

(2) SALE. No person may sell or possess with intent to sell fireworks, except:

- (a) To a person holding a permit under sub. (3) (c);
- (b) To a city, village or town; or
- (c) For a purpose specified under sub. (3) (b) 2 to 6.

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

(b) Paragraph (a) does not apply to:

1. The city, village or town, but municipal fire and law enforcement officials shall be notified of the proposed use of fireworks at least 2 days in advance.

2. The possession or use of explosives in accordance with rules or general orders of the department of industry, labor and human relations.

3. The disposal of hazardous substances in accordance with rules adopted by the department of natural resources.

4. The possession or use of explosive or combustible materials in any manufacturing process.

5. The possession or use of explosive or combustible materials in connection with classes conducted by educational institutions.

6. A possessor or manufacturer of explosives in possession of a license or permit under 18 USC 841 to 848 if the possession of the fireworks is authorized under the license or permit.

(c) A permit under this subsection may be issued only to the following:

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.

(d) A person issued a permit for crop protection shall erect appropriate warning signs disclosing the use of fireworks for crop protection.

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

(f) A permit under this subsection shall specify all of the following:

1. The name and address of the permit holder.

2. The date on and after which fireworks may be purchased.

3. The kind and quantity of fireworks which may be purchased.

4. The date and location of permitted use.

5. Other special conditions prescribed by ordinance.

(g) A copy of a permit under this subsection shall be given to municipal fire or law enforcement official at least 2 days before the date of authorized use.

(h) A permit under this subsection may not be issued to a minor.

(4) **OUT-OF-STATE.** This section does not prohibit a resident wholesaler, dealer or jobber from selling fireworks at wholesale, if that wholesaler, dealer or jobber ships or delivers the fireworks outside of this state in sealed opaque containers by, as defined in s. 194.01 (5), (11) and (14), common motor carrier, contract motor carrier or private motor carrier engaged in the business of shipping or delivering property, or to a person or group granted a permit under sub. (3) (c) 1 to 7.

(5) **LOCAL REGULATION.** (a) A city, village or town may adopt an ordinance for any of the following:

1. Defining "fireworks" to include all items included under sub. (1) (intro.) and anything under sub. (1) (e), (f), (i), (j), (k), (L), (m) and (n).

2. Prohibiting the sale, possession or use, as defined by ordinance, of fireworks.

3. Regulating the sale, possession or use, as defined by ordinance, of fireworks.

(b) An ordinance under par. (a) may not be less restrictive in its coverage, prohibition or regulation than this section but may be more restrictive than this section.

(6) **STORAGE AND HANDLING.** (a) No wholesaler, dealer or jobber may store or handle fireworks in premises unless the premises are equipped with fire extinguishers approved by the fire official of the municipality where the premise is located.

(b) No person may smoke where fireworks are stored or handled.

(c) A person who stores or handles fireworks shall notify the fire official of the municipality in which the fireworks are stored or handled of the location of the fireworks.

(d) No wholesaler, dealer or jobber may store fireworks within 50 feet of a dwelling.

(e) No person may store fireworks within 50 feet of a public assemblage or place where gasoline or volatile liquid is sold in quantities exceeding one gallon.

(6m) **LICENSING AND INSPECTING MANUFACTURERS.** (a) After June 30, 1985, no person may manufacture in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) without a fireworks manufacturing license issued by the department of industry, labor and human relations.

(b) After June 30, 1985, no person may manufacturer in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) unless the person complies with the rules of the department of industry, labor and human relations promulgated under par. (e).

(c) Any person who, after June 30, 1985, manufacturers in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) shall provide the department of industry, labor and human relations with a copy of each federal license issued under 18 USC 843 to that person.

(d) The department of industry, labor and human relations shall issue a license to manufacture fireworks or devices listed under sub. (1) (e), (f) or (i) to (n) to a person who complies with the rules of the department promulgated under par. (e). The department may not issue a license to a person who does not comply with the rules promulgated under par. (e). The department may revoke a license under this subsection for the refusal to permit an inspection by the department or for a continuing violation of the rules promulgated under par. (e).

(e) The department of industry, labor and human relations shall promulgate rules to establish safety standards for the manufacture in this state of fireworks and devices listed under sub. (1) (e), (f) or (i) to (n). The rules may not take effect before July 1, 1985.

(f) The department may inspect at reasonable times the premises on which each person licensed under this subsection manufactures fireworks or devices listed under sub. (1) (e), (f) or (i) to (n).

(7) PARENTAL LIABILITY. A parent or legal guardian of a minor who consents to the use of fireworks by the minor is liable for damages caused by the minor's use of the fireworks.

(8) ENFORCEMENT. (a) A city, village or town may petition the circuit court for an order enjoining violations of sub. (2), (3) or (6) or an ordinance adopted under sub. (5).

(b) Fireworks stored, handled, sold, possessed or used by a person who violates this section, an ordinance adopted under sub. (5) or a court order under par. (a) shall be seized. The fireworks shall be destroyed after conviction for a violation, and otherwise returned to the owner.

(9) PENALTIES. (a) A person who violates a court order under sub. (8) (a) shall be fined not more than \$10,000 or imprisoned not more than 9 months or both.

(b) A person who violates sub. (2), (3) or (6) or an ordinance adopted under sub. (5) shall forfeit not more than \$1,000.

(c) A parent or legal guardian of a minor who consents to the use of fireworks by the minor shall forfeit not more than \$1,000.

(d) A person who, in this state, breaks the seal of a container in which fireworks are delivered to a nonresident under sub. (4m) or possesses such a container, the seal of which has been broken, shall forfeit not more than \$500.

(e) A person who, without a permit under sub. (3), uses in this state fireworks delivered to a nonresident under sub. (4m) shall forfeit not more than \$1,000.

(f) A wholesaler, dealer or jobber who delivers fireworks at retail to a person who is not a resident of this state without delivering them in a sealed opaque container meeting the specifications listed under sub. (4m) (b) shall forfeit not more than \$1,000.

(g) Whoever violates sub. (6m) (a), (b) or (c) or a rule promulgated under sub. (6m) (e) may be fined not more than \$10,000 or imprisoned not more than 10 years or both.

SECTION 2. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

(1) INDUSTRY, LABOR AND HUMAN RELATIONS.		
A	B	C
Statute Sections	References Deleted	References Inserted
15.221 (intro.)	167.10	167.10 (6m)

SECTION 3. Effective date. This act takes effect on September 1, 1984.