



2003 ASSEMBLY BILL 438

July 21, 2003 - Introduced by Representatives KERKMAN, STEINBRINK, ALBERS, HINES, KREUSER, J. LEHMAN, M. LEHMAN, LOTHIAN, OTT and TURNER, cosponsored by Senators BROWN, RISSER, ROESSLER and WIRCH. Referred to Committee on Criminal Justice.

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.

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, 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

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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 two 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.

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 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 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

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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

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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 five 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 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.

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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), 101.9205 (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.

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.

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).

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

2 167.10 (3) (title) USE AND POSSESSION; 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
22 supervising the display. The application shall include the Pyrotechnics Guild
23 International certification number of that person.

24 4. The chief of a fire department providing fire protection to the city, village,
25 or town shall approve and sign each permit issued under this paragraph after par.

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1 (em) is satisfied, but before the permit is issued by the city, village, or town. The fire
2 chief shall retain a copy of each permit that he or she approves and signs.

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

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

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

9 167.10 (3) (b) 1m. The possession of fireworks that are offered for sale as
10 authorized under sub. (2) or (3m), by the person offering the fireworks for sale.

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

13 167.10 (3) (c) A permit under ~~this subsection~~ par. (a) may be issued only to the
14 following: for the purpose of conducting a fireworks display. All outdoor displays
15 shall meet the requirements of National Fire Protection Association standard NFPA
16 1123, Code for Fireworks Display, 1995 edition, approved by the American National
17 Standards Institute.

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

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

21 167.10 (3g) In addition to permits under sub. (3), a city, village, or town may
22 issue a permit authorizing an agricultural producer to purchase, possess, and use
23 fireworks for the protection of crops from predatory birds or animals. The city,
24 village, or town shall provide a copy of any permit issued under this subsection to the
25 chief of a fire department providing fire protection to the city, village, or town. A

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1 permit may not be issued under this subsection to a minor. A person issued a permit
2 ~~for crop protection~~ under the subsection shall erect appropriate warning signs
3 disclosing the use of fireworks for crop protection.

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

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

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

17 167.10 (3) (em) A permit under par. (a) may be issued only if all of the following
18 apply:

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

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

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

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

5 167.10 (3) (f) (intro.) A permit under ~~this subsection~~ par. (a) shall specify all of
6 the following:

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

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

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

11 167.10 (3) (h) A permit under ~~this subsection~~ par. (a) may not be issued to a
12 minor.

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

14 167.10 (3m) WHOLESALE LICENSES; REGISTRATION OF WHOLESALE PURCHASERS. (a)
15 In this subsection, “wholesale” means the sale of fireworks to a fireworks wholesaler
16 who is licensed in this state or to a person who is registered with the department of
17 commerce under par. (c).

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

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

24 3. A licensed fireworks wholesaler shall maintain a record of each sale of
25 fireworks for 5 years. The record shall include the name, address, and license or

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1 registration number of the purchaser, the date of purchase, and the amount and type
2 of fireworks sold to the purchaser.

3 (c) The department of commerce shall promulgate rules governing the licensing
4 of fireworks wholesalers and annual registration of wholesale purchasers. The rules
5 shall require an applicant for registration to provide proof, other than a signed
6 statement, that the person is engaged in the legal retail or wholesale sale of
7 fireworks. The department shall assign a registration number to each person
8 meeting the requirements for registration. The rules shall specify a license and
9 registration fee and enforcement procedures, including license suspension or
10 revocation against a licensee who violates this section or any other state or federal
11 laws or regulations pertaining to fireworks.

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

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

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

24 167.10 (7) (title) LIABILITY.

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

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

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

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

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

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

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

21 167.10 (9) (b) A person who violates sub. (2), (3) or (6) ~~or an ordinance adopted~~
22 ~~under sub. (5) shall~~ may be required to forfeit not more than \$1,000, except that a
23 person who violates sub. (3) or (6) may be fined not more than \$10,000 or imprisoned
24 for not more than 9 months or both, for any violation within 3 years of a previous
25 violation.

