



**WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE**

**SPECIAL COMMITTEE ON
REVIEW OF
FIREWORKS LAW**

March 21, 2003

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REPORT TO THE LEGISLATURE**

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Special Committee on Review of Fireworks Law voted to recommend three proposals to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature. Those proposals are described below. It should be noted that the Joint Legislative Council voted to introduce only one of those drafts: Assembly Bill 179 (and its companion bill Senate Bill 75).

2003 ASSEMBLY BILL 179 AND 2003 SENATE BILL 75, RELATING TO CREATING A CIVIL LIABILITY EXEMPTION FOR CERTAIN MUNICIPALITIES AND THEIR AGENTS THAT ISSUE FIREWORKS PERMITS

- Provide that no city, village, town, or committee, official, or employee of a city, village, or town may be held liable for damage to any person or property caused by fireworks as a result of the issuance of a legal permit that authorized the purchase, possession, or use of fireworks.

LRB-2112/1, RELATING TO THE SALE OF FIREWORKS ; FIREWORKS PERMITS AND DISPLAYS ; SHIPPING FIREWORKS ; FIREWORKS WHOLESALERS LICENSES ; DISPOSITION OF SEIZED FIREWORKS ; FIREWORKS ENFORCEMENT ; GRANTING RULE-MAKING AUTHORITY ; MAKING AN APPROPRIATION AND PROVIDING A PENALTY

Fireworks Displays and Display Permits

The draft clarifies that permits to purchase fireworks may be issued only for the purpose of putting on a fireworks display and may not be issued to individuals for the purchase of fireworks for their personal use. To make these clarifications, the draft contains the following provisions:

- Except for agricultural producers, repeals the list of entities to whom a fireworks 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.
- Specifies that all outdoor fireworks 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.
- Specifies that fireworks display permits may only be obtained directly from a municipality, at a location where the municipal employee who issues the permit carries out his or her official duties during the normal course of conducting municipal affairs.

- Specifies that a permit may only be issued for the purpose of a fireworks display and requires the application to specify a person certified by the Pyrotechnics Guild International who will be responsible for supervising the display.
- Requires an application for a fireworks permit to be made at least 20 days prior to the proposed date of the display.
- Requires the fire chief of the municipality to approve and sign each permit before it is issued and to maintain copies of each permit signed.
- Specifies that a fireworks permit may not be issued unless all of the following occur:
 - The appropriate municipal fire chief or his or her designee conduct an onsite inspection of the site where the proposed display is to occur.
 - The inspector determines that the location of the proposed display does not pose any issues of public safety.
 - The inspector determines that adequate fire protection and crowd control plans are in place for the proposed display.
- Requires the city, village, or town issuing a fireworks permit to send a copy of the permit to the Department of Commerce (Commerce) within 10 working days of issuance.
- Prohibits a city, village, or town from issuing a fireworks permit to an individual unless the individual purchases an indemnity bond or liability insurance policy in the name of the city, village, or town for payment of any claims that may arise due to the permitted fireworks display.

Shipping and Sales by Wholesalers to Persons Outside of Wisconsin

- Specifies 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.
- Specifies that fireworks shipped by a wholesaler must be transported by common motor carrier, a licensed wholesaler, or a person registered with Commerce to purchase wholesale fireworks.

Wholesale Licenses

- Provides that no person may sell fireworks at wholesale without a fireworks wholesale license from Commerce.
- Directs Commerce to promulgate rules governing the licensure of fireworks wholesalers.

- Prohibits the sale of fireworks at wholesale to or the purchase of fireworks at wholesale by a person who is not a licensed fireworks wholesaler or registered with Commerce as a person engaged in the legal retail or wholesale sale of fireworks.
- Requires fireworks wholesalers to keep specified records regarding each sale for a period of five years.

Disposition of Seized Fireworks

- Repeals special procedures in current law for the disposition of seized fireworks and provides instead that fireworks seized as evidence are subject to the statutory procedures that apply to seized property in general.

Penalties and Enforcement

- Authorizes the district attorney of the county where a fireworks violation occurs, or the state Attorney General to petition the circuit court for an order enjoining the violation.
- Authorizes a district attorney, a corporation counsel, or the Attorney General to enforce an order enjoining violation of the laws regarding sales, possession, use, or storage of fireworks.
- Increases the penalty for illegal sale of fireworks, or possession of fireworks with intent to sell them illegally, from the current \$1,000 forfeiture to a fine of up to \$10,000, imprisonment for up to nine months, or both.
- Provides that a person who is convicted of a repeat violation of a state law regarding possession, use, or storage of fireworks within three years of a prior violation may be fined up to \$10,000 or imprisoned up to nine months, or both.
- Establishes 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

- 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.

LRB-2113/1, RELATING TO THE SALE OF FIREWORKS FROM CERTAIN LOCATIONS, AND PROVIDING A PENALTY

- Prohibits the sale, possession with intent to sell, offering for sale, or displaying for sale of fireworks, from a location that is not a permanent building and establishes a penalty of a fine of not more than \$10,000 or imprisonment for not more than nine months, or both, for violations of the new prohibition.

- Increases the penalty for the sale of fireworks or possession of fireworks with the intent to sell them from the current \$1,000 forfeiture to a fine of not more than \$10,000 or imprisonment for not more than nine months, or both.

PART II

COMMITTEE ACTIVITY

ASSIGNMENT

The Joint Legislative Council established the Special Committee on Review of Fireworks Law and appointed the co-chairs by a May 15, 2002 mail ballot. The committee was directed to study issues surrounding the sale, possession, and use of fireworks in Wisconsin and to review Wisconsin law regulating fireworks, including the interaction between state and federal law and the impact of the law on fireworks retailers, local units of government, the law enforcement community, the state economy, and the public and recommend improvements to the law.

Membership of the Special Committee, appointed by a July 15, 2002 mail ballot, consisted of one Senator, three Representatives and 10 public members. A list of committee members is included as *Appendix 3* to this report.

SUMMARY OF MEETINGS

The Special Committee held four meetings at the State Capitol in Madison on the following dates:

September 12, 2002

December 4, 2002

October 23, 2002

January 23, 2003

September 12, 2002: The Special Committee on Review of Fireworks Law heard testimony from an array of invited speakers.

Kenneth Kutz, the Burnett County District Attorney, discussed prosecution of fireworks violations. Dr. Murray L. Katcher, University of Wisconsin (UW) Health Department of Pediatrics, Madison, discussed safety risks that fireworks may pose to children. Dr. John Conkling, a pyrotechnics expert from Maryland, discussed the history of fireworks regulation, recent safety improvements, and the pyrotechnic effects used in fireworks. Representative Donald Friske, a former police officer, discussed the practical difficulties in enforcing fireworks laws. Neil Cameron, the Appleton Fire Chief, disputed claims that the law is too confusing to enforce and commented that some fireworks dealers deliberately confuse the public into thinking that illegal fireworks are actually legal. Juan Colas, Assistant Attorney General, Department of Justice, stated the position of the Attorney General's office that the only individuals who may legally purchase fireworks in Wisconsin are agricultural producers for the protection of crops. Richard Bucklew, Law Enforcement Specialist, Department of Natural Resources, discussed the connection between fireworks and forest fires. Eric Hands, Commerce, discussed the department's role in regulating the manufacture of fireworks. Michelle Reinen, Department of Agriculture, Trade and Consumer Protection, discussed consumer protection activities relating to fireworks.

October 23, 2002: The Special Committee heard testimony from the Federal Bureau of Alcohol, Tobacco, and Firearms (BATF). John Jarowski, St. Paul Director of Industry Operations and Cherie Knoblock, Milwaukee Area Supervisor, summarized the federal explosives law enforced by the BATF. The committee then discussed options for clarification and alteration of Wisconsin fireworks law. Based on this discussion, the co-chairs directed staff to prepare a document outlining options for establishing a system for licensing wholesale and retail fireworks dealers including: authorizing local governments to issue fireworks dealers' licenses or to prohibit fireworks sales within their boundaries; requiring all sales to be made only from permanent structures; prohibiting sales to persons under the age of 18; and clarifying that illegal fireworks may not be sold to nonresidents.

December 4, 2002: The committee discussed a portion of the proposals offered by committee members and detailed in Legislative Council Memo No. 2, *Licensing Proposal and Other Alternatives for Changes to Fireworks Law* (November 27, 2002). The committee tentatively agreed upon the following provisions:

- Any legal firework or novelty that requires external ignition may not be sold to or purchased by a person under the age of 18.
- Safety glasses must be offered for sale at any location where retail fireworks are sold.
- The committee will establish a licensure system and legalize the retail sale of certain consumer fireworks and novelties.
- Cities, towns, and villages would be authorized to issue retail fireworks licenses under the committee proposal.
- Retail licenses must be revoked or suspended if a license holder is convicted of a criminal violation of state or federal fireworks or explosives law.
- All fireworks retailers must provide proof of adequate insurance to receive a license.
- A retail fireworks license may not be issued to any person under the age of 18.

Several members of the committee indicated that it was difficult to continue discussing the licensure portion of the proposal until the committee agreed upon what types of fireworks would be made legal as part of the proposal. The committee agreed to continue the discussion of the licensing proposal and other proposals contained in Memo No. 2 at the next meeting. The co-chairs of the committee requested that staff prepare an updated version of Memo No. 2 which reflects the provisions adopted at the December 4, 2002, meeting.

January 23, 2003: Co-Chair Risser provided an overview of what had transpired since the committee last met. He explained that he and Co-Chair Freese believed the committee was not likely to reach a consensus on issues surrounding the legalization of fireworks sales and licensure. He summarized a letter that he and Co-Chair Freese sent to the committee, which explained their position and offered WLC: 0117/2 as a potential compromise. Co-Chair Freese recommended the committee offer WLC: 0117/2 as a compromise on which the committee could agree. He explained that WLC: 0117/2 prohibited the sale, possession with intent to sell,

offering or displaying for sale of fireworks from any location other than a permanent building even if the sale of those fireworks would otherwise be legal. The draft established a criminal penalty for violations of the prohibition.

The committee voted to amend WLC: 0017/2 to include establishment of a criminal penalty for all illegal fireworks sales and voted to recommend the draft as amended, and directed staff to prepare two more drafts for the committee to vote on by mail ballot. Those drafts were WLC: 0129/1 (LRB-2112/1), which contained numerous provisions relating to fireworks sales; permits, and displays and established a criminal penalty for illegal fireworks sales, possession and use; and WLC: 0134/1 (LRB-2111/1), relating to a civil liability exemption for municipalities that issue legal fireworks permits. Both drafts were approved by mail ballot, as described in Part III of this report.

At its last meeting the committee also voted unanimously to send a letter to the Attorney General asking the Department of Justice to prepare a handbook for distribution to local law enforcement officials that summarizes and clarifies current statutory and case law regarding the sales and possession of fireworks in Wisconsin. The handbook is expected to alleviate the confusion local law enforcement officials have encountered when seeking to enforce fireworks laws.

PART III

RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the drafts recommended by the Special Committee on Review of the Fireworks Law for introduction in the 2003-04 Session of the Legislature. As discussed in Part I, only one of the drafts LRB-2111/1, was subsequently introduced by the Joint Legislative Council.

2003 ASSEMBLY BILL 179 AND 2003 SENATE BILL 75, RELATING TO CREATING A CIVIL LIABILITY EXEMPTION FOR CERTAIN MUNICIPALITIES AND THEIR AGENTS THAT ISSUE FIREWORKS PERMITS

Background

At the request of the Wisconsin Towns Association, a majority of members of the committee agreed to recommend legislation to provide municipalities that issue fireworks permits with immunity from civil liability for damages from the use of the permitted fireworks. The majority of the committee agreed that municipalities should not be held liable for damages caused by the use of fireworks by reason of issuing a permit if the permit that authorized the purchase, use, or possession of the fireworks complied with all legal requirements.

Description

Current law generally prohibits the sale of fireworks and the possession of fireworks with the intent to sell them. The exceptions are that fireworks may be sold to a person holding a valid user's permit, to a city, village, or town, or for certain specified purposes such as in a manufacturing process. The law authorizes a city, village, or town to issue a user's permit if certain requirements are met.

Current law also generally limits local government liability for damages, injury, or death to \$50,000. [See s. 893.80 (3), Stats.]

The bill provides that no city, village, or town or committee, official, or employee of a city, village, or town is civilly liable for damage to any person or property caused by fireworks by reason of issuing a permit, in accordance with statutory requirements, that authorized the purchase, possession, or use of the fireworks.

PART IV

OTHER COMMITTEE RECOMMENDATIONS NOT INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

LRB-2112/1, RELATING TO THE SALE OF FIREWORKS ; FIREWORKS PERMITS AND DISPLAYS ; SHIPPING FIREWORKS ; FIREWORKS WHOLESALERS LICENSES ; DISPOSITION OF SEIZED FIREWORKS ; FIREWORKS ENFORCEMENT ; GRANTING RULE-MAKING AUTHORITY ; MAKING AN APPROPRIATION AND PROVIDING A PENALTY

Background

The committee heard testimony from numerous presenters that in various municipalities throughout the state it is common practice for fireworks retailers, in concert with municipalities, to issue so-called “fireworks permits” to individual members of the general public, typically for a fee of several dollars. The persons issuing the permits represent to the public that the permits authorize the purchase of fireworks that would otherwise be illegal to possess or use, or to sell at retail. The Wisconsin Court of Appeals, in *City of Wisconsin Dells v. Dells Fireworks*, 197 Wis. 2d 1, 539 N.W.2d 916 (Ct. App. 1995) ruled that fireworks permits may not be issued to individuals, other than farmers who are purchasing fireworks to protect their crops from predatory birds and animals, and therefore the possession, use, and sale of fireworks pursuant to a permit issued to an individual is illegal. In addition, these permits typically fail to meet other statutory requirements, such as specifying the date and location that the fireworks will be used or the requirement that a copy of the permit be given to the municipal fire or law enforcement official at least two days before the date that the permit authorizes use of fireworks.

Another issue of concern regarding fireworks sales is that some fireworks dealers continue to sell fireworks to nonresidents of Wisconsin despite the court of appeals ruling in *State v. Victory Fireworks, Inc.*, 230 Wis. 2d 721, 602 N.W.2d 128 (Ct. App. 1999) that fireworks may not be sold to a person who is physically located inside this state at the time the sale is made, regardless of the person’s state of residency. A majority of the committee voted to clarify the law by codifying the court’s rulings in this case.

The committee also heard testimony that some fireworks dealers try to get around the prohibition on retail sale of fireworks by falsely characterizing retail sales as wholesale transactions. Typically this involves requiring the purchaser to sign a statement that he or she is buying the fireworks at wholesale, without requiring any proof that the person intends to resell the fireworks, as a legitimate wholesaler would. To eliminate this practice, the committee voted to create various statutory provisions regulating wholesale sale of fireworks. These provisions are designed to ensure that retail sales cannot be passed off as wholesale transactions, yet not disrupt the business of allowing legitimate wholesalers in the state.

A majority of members also agreed to codify the court’s decision and to further clarify that fireworks permits are to be issued only to persons who intend to purchase fireworks for the

purpose of putting on a fireworks display. The committee also noted that there are no standards in current law applicable to fireworks displays and therefore supported adoption of nationally recognized standards for safe displays in Wisconsin.

The committee also agreed that to enable and encourage increased enforcement of the current law and reduction of illegal sales of fireworks, a criminal penalty should be established for illegal fireworks sales and repeat violations of other fireworks laws. To lessen burdens on law enforcement agencies, the committee voted to eliminate special provisions regarding the disposition of seized fireworks and make seized fireworks subject to the same procedures as other seized evidence. The committee also responded to prosecutor's requests to authorize district attorneys and the Attorney General to petition circuit courts for injunctions of illegal fireworks activities and to make other minor changes to enhance enforcement of fireworks laws.

In light of the dangers posed by illegal fireworks and the fact that some dealers reap large profits through this illegal activity while misleading the public into thinking that the items are being offered for sale legally, a majority of the members supported establishment of a provision in the statutes stating that a person who sells fireworks in violation of the law may be held liable for death, injuries, or property damage caused by the illegal fireworks.

Description

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 chair 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 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.

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 draft 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 draft does the following:

a. 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 draft 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 draft 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.

b. 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.

c. 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.

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

e. 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.

f. Specifies that a permit may not be issued unless: (1) 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 onsite inspection of the area where fireworks are proposed to be displayed; (2) 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; or (3) the person conducting the inspection determines that there are adequate plans in place for fire protection and crowd control for the proposed display.

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

h. 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 draft provides that the city, village, or town must require such a bond or policy to be taken.

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 section 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 draft amends this provision by deleting references to “jobbers” and specifying 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 draft codifies that decision.

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

Wholesale Licenses

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

The draft specifies that fireworks may be sold at wholesale only to another licensed fireworks wholesaler or a person who is registered with 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 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.

The draft requires fireworks wholesalers to maintain a record of each sale of fireworks for five 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 draft 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 nine months, or both.

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

a. 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.

b. 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.

c. 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.

d. 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.

e. 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 draft 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.

LRB-2113/1, RELATING TO THE SALE OF FIREWORKS FROM CERTAIN LOCATIONS, AND PROVIDING A PENALTY

Background

The committee heard testimony describing the safety hazards associated with fireworks and heard that transient fireworks dealers have periodically been found to be selling the most dangerous types of nonconsumer fireworks. The committee also heard that law enforcement officials have a particularly difficult time enforcing the law against transient dealers, who are able to avoid the law by packing up and moving to a new location. A majority of committee members were convinced that the sale of fireworks from nonpermanent structures such as tents or truck trailers is a particularly hazardous practice and should be banned. Also, because sale of the most dangerous fireworks items is highly profitable, and conviction of transient dealers is difficult, the current penalty of a \$1,000 forfeiture is inadequate to dissuade the practice. Therefore, the committee recommends establishing as a penalty for illegal fireworks sales from nonpermanent structures, a fine of up to \$10,000, or imprisonment of nine months, or both.

Law enforcement officials and several district attorneys described the difficulties they face enforcing prohibitions against illegal sales of fireworks. They stressed that illegal sale of fireworks should be reclassified as a crime, to enable better prosecution and provide a greater deterrent. They indicated that the current penalty of a forfeiture of up to \$1,000 was not enough of a penalty to deter illegal sales or to justify the time and money expended in prosecuting such cases. Thus, district attorneys were unlikely to spend the time enforcing the current law. Therefore, a majority of the members agreed that the penalty for illegal sales should be increased to a fine of up to \$10,000, or imprisonment of nine months, or both.

Description

Current law generally prohibits the sale of fireworks and the possession of fireworks with intent to sell them. The exceptions are that fireworks may be sold to a person holding a valid user's permit, to a city, village, or town, or for certain specified purposes such as in a manufacturing process.

Under current law, a person who violates the statutory prohibition on fireworks sales or possession of fireworks with intent to sell them is subject to a forfeiture of not more than \$1,000.

The draft increases the penalty to a fine of not more than \$10,000, imprisonment for not more than nine months, or both.

In addition, the draft prohibits fireworks sales, possession of fireworks with intent to sell, offering for sale, or displaying fireworks for sale in a location that is not a permanent building. "Permanent building" is defined to mean "a structure, resting on its own foundation, that is commonly known to be a building because of its appearance and because of the materials of which it is constructed, that is intended to remain permanently in a fixed location, that is not readily moved or disassembled and is identifiable by a permanent address consisting of a street name and number." Nonfireworks items may be sold from nonpermanent buildings, unless otherwise prohibited by law.

The draft establishes a penalty of a fine of not more than \$10,000 or imprisonment for not more than nine months, or both for violations of the prohibitions related to sale of fireworks from locations other than permanent buildings.

Committee and Joint Legislative Council Votes

This Appendix identifies the votes by the Special Committee on Review of Fireworks Law and the Joint Legislative Council on the proposals that were approved by the Special Committee for recommendation to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature:

SPECIAL COMMITTEE VOTES

The following drafts were approved by the Special Committee for recommendation to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature. The votes on the drafts were as follows:

- WLC: 0117/3, relating to fireworks sales, the sale of fireworks from certain locations and establishing a penalty, was recommended, as amended, by a vote of Ayes, 8 (Sen. Risser; Reps. Kerkman and Steinbrink; and Public Members Guilbert, Hanson, Jansen, Morrison, and Pettit); Noes, 4 (Rep. Freese; and Public Members Cornellier, Schulte, and Worrick); and Absent, 2 (Public Members Britton and Weeth).
- WLC: 0129/1, relating to the sale of fireworks; fireworks permits and displays; shipping fireworks; fireworks wholesalers licenses; disposition of seized fireworks; fireworks enforcement; and creating a penalty, was recommended by a vote of Ayes, 9 (Sen. Risser; Reps. Kerkman and Steinbrink; and Public Members Britton, Guilbert, Hanson, Jansen, Morrison, and Pettit); and Noes, 5 (Rep. Freese; and Public Members Cornellier, Schulte, Weeth, and Worrick).
- WLC: 0134/1, relating to a civil liability exemption for municipalities that issue fireworks permits, was recommended by a vote of Ayes, 10 (Sen. Risser; Rep. Freese; and Public Members Britton, Cornellier, Hanson, Jansen, Pettit, Schulte, Weeth, and Worrick); and Noes, 4 (Reps. Kerkman and Steinbrink; and Public Members Guilbert and Morrison).

JOINT LEGISLATIVE COUNCIL VOTES

At its March 12, 2003 meeting, the Joint Legislative Council voted as follows on the recommendations of the Special Committee:

- Introduction by the Joint Legislative Council of LRB-2111/1 **PASSED** by a unanimous voice vote. LRB-2111/1 was subsequently introduced as 2003 Assembly Bill 179 and 2003 Senate Bill 75.
- Introduction by the Joint Legislative Council of LRB-2112/1 **FAILED** on a roll call vote as follows: Ayes, 6 (Sens. Erpenbach and Risser; and Reps. Coggs, Kreuser,

Schneider, and Travis); Noes, 11 (Sens. Lasee, Darling, Harsdorf, Panzer, and Welch; and Reps. Wieckert, Foti, Freese, Kaufert, Lehman, and Townsend); Absent, 4 (Sens. Decker, Ellis, and George; and Rep. Gard); and Vacancy, 1.

- Introduction by the Joint Legislative Council of LRB-2113/1 **FAILED** on a roll call vote as follows: Ayes, 5 (Sens. Erpenbach and Risser; and Reps. Coggs, Kreuser, and Travis); Noes, 12 (Sens. Lasee, Darling, Harsdorf, Panzer, and Welch; and Reps. Wieckert, Foti, Freese, Kaufert, Lehman, Schneider, and Townsend); Absent, 4 (Sens. Decker, Ellis, and George; and Rep. Gard); and Vacancy, 1.

APPENDIX 2

JOINT LEGISLATIVE COUNCIL

s. 13.81, Stats.

Co-CHAIR

ALAN LASEE
Senate President
2259 Lasee Road
De Pere, WI 54115

Co-CHAIR

STEVE WIECKERT
Representative
1702 S. Irma Street
Appleton, WI 54915

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1325 West Dean Road
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RUSSELL DECKER
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Madison, WI 53705

MICHAEL G. ELLIS
1752 County Road GG
Neenah, WI 54956

VACANCY

ROBERT WELCH
President Pro Tempore
P.O. Box 523
Redgranite, WI 54970

JON ERPENBACH
Minority Leader
2385 Branch St.
Middleton, WI 53562

REPRESENTATIVES

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3732 North 40th Street
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Neenah, WI 54956

MARLIN D. SCHNEIDER
3820 Southbrook Lane
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Majority Leader
351 Lisbon Road
Oconomowoc, WI 53066

JIM KREUSER
Minority Leader
3505 14th Place
Kenosha, WI 53144

JOHN TOWNSEND
297 Roosevelt Street
Fond du Lac, WI 54935

STEPHEN J. FREESE
Speaker Pro Tempore
310 East North Street
Dodgeville, WI 53533

MICHAEL LEHMAN
1317 Honeysuckle Road
Hartford, WI 53027

DAVID TRAVIS
5440 Willow Road
Waunakee, WI 53597

JOHN GARD
Speaker
481 Aubin Street
P.O. Box 119
Peshtigo, WI 54157

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

REVIEW OF FIREWORKS LAW

Representative Stephen J. Freese, **Co-Chair**
310 East North Street
Dodgeville, WI 53533

Representative Samantha Kerkman
8705 300 85th Street
Burlington, WI 53105

Jeffrey W. Britton
WI-American Academy of Pediatrics
2414 Kohler Memorial Drive
Sheboygan, WI 53081-3170

Paul G. Guilbert, Jr.
Chief, Pleasant Prairie Fire Dept.
8044-88th Avenue
Pleasant Prairie, WI 53158-2015

Allan A. Jansen
Jamestown Town Clerk
910 Badger Road
Hazel Green, WI 53811-9745

Douglas Pettit
Wisconsin Police Chiefs Association
383 Park Street
Oregon, WI 53575-1569

Charles P. Weeth
122 South 17th Street
La Crosse, WI 54601-4208
Sturgeon Bay, WI 54235-1495

Senator Fred A. Risser, **Co-Chair**
5008 Risser Road
Madison, WI 53705

Representative John P. Steinbrink
8602-88th Avenue
Pleasant Prairie, WI 53158

Larry Cornellier
Cornellier Fireworks Company
105 Dearborn Street
Beloit, WI 53511-6441

Jason Hanson
Dane County District Attorney's Office
210 Martin Luther King, Jr. Blvd., Rm. 523
Madison, WI 53703-3346

Robert E. Morrison
Alderman, City of Racine
1100 Florence Avenue
Racine, WI 53402-3920

Wayne D. Schulte
Victory Fireworks, Inc.
579 Vincent Lane, P.O. Box 268
Ellsworth, WI 54011-0268

Gerald Worrick
Door County Memorial Hospital
323 South 18th Avenue

STUDY ASSIGNMENT: The Committee shall study issues surrounding the sale, possession, and use of fireworks in Wisconsin and shall review current Wisconsin law regulating fireworks, including the interaction between state and federal law and the impact of the law on fireworks retailers, local units of government, the law enforcement community, the state economy, and the public and recommend improvements to the law.

Established and Co-Chairs appointed by a May 22, 2002 mail ballot; members appointed by a July 15, 2002 mail ballot.

14 MEMBERS: 1 Senator; 3 Representatives; and 10 Public Members.

LEGISLATIVE COUNCIL STAFF: Mary Matthias, Senior Staff Attorney; Dan Schmidt, Analyst; and Rachel Veum, Support Staff.

Committee Materials List

January 23, 2003 Meeting

[Letter](#), from Senator Fred A. Risser and Representative Stephen Freese, Co-Chairs, Special Committee on Review of Fireworks Law (1-15-03)

[WLC: 0117/2](#), relating to the sale of fireworks and establishing a penalty

[Testimony](#) with attachments from Public Member Al Jansen

[Letter](#), from Larry Plummer, Chairman, WI Fire and EMS Legislative Leadership Coalition

December 4, 2002 Meeting

[Memo No. 2](#), **Licensing Proposal and Other Alternatives for Changes to Fireworks Law** (11-26-02)

[Chart](#), **Summary of Selected States' Licensure Laws** (11-26-02)

[Memo](#), **Wisconsin Circuit Court Fireworks Prosecutions for 1999, 2000, and 2001** (11-26-02)

[2001 Fireworks Annual Report](#), **Fireworks-Related Deaths, Emergency Department Treated Injuries, and Enforcement Activities During 2001**

[1999](#) and [2000 Fireworks Annual Report](#), **Fireworks-Related Deaths, Emergency Department Treated Injuries, and Enforcement Activities During 1999 and 2000** (6-00 & 6-01) Executive Summaries only, prepared by Michael A. Greene, Division of Hazard Analysis, Directorate for Epidemiology, CPSC, and Patrick M. Race, Office of Compliance, CPSC

[Article](#), "Fatal Pierce County fire linked to faulty wiring," Milwaukee Journal Sentinel (8-10-99), and [article](#), "Flames from plastic bucket apparently ignited outside of residence, killing 5," Milwaukee Journal Sentinel (7-13-99)

[Beloit City Fireworks Permit Ordinance](#), **14.03 Fireworks Permits** (10-1-01)

[Letter with attachment](#), **Fire Marshal's Report** (11-13-02)

[Memorandum](#), **Fireworks Amendment**, to Wisconsin Senators, from Wisconsin State Fire Chiefs Association (6-14-01)

[Article](#), "Fatal fire blamed on fireworks," Pierce County Herald (1999)

[Article](#), "Crackdown on illegal fireworks to begin in region," Racine Journal Sentinel (6-18-01)

[Report](#), **An Analysis of United States Fireworks-Related Injuries**, Julie L. Heckman, American Pyrotechnics Association (9-1996)

[Report](#), **An Analysis of the National Electronic Injury Surveillance System (NEISS) Estimates of Consumer Fireworks Related Injuries and the Interpretation, Reporting and Publicity by the U.S. Consumer Product Safety Commission (CPSC) and Non-profit Public Safety Organizations Based on those NEISS Estimates**, Charles P. Weeth, Consultant, La Crosse (9-1996)

October 23, 2002 Meeting

[Memo No. 1](#), **Recommendations for Changes to Fireworks Law** (10-16-02)

[Chart](#), **Selected Provisions of Neighboring States' Fireworks Laws** (10-16-02)

[Handout](#), **John R. Hall, Jr., Fireworks-Related Injuries, Deaths, and Fires in the U.S.**, National Fire Protection Association (3-2001)

[Handout](#), **Alan R. Earls, "SAFE 'crackers' ,"** NFPA Journal (Fireworks storage) (May 2001)

September 12, 2002 Meeting

[Staff Brief 02-6](#), **Review of Wisconsin Fireworks Law** (9-4-02)

[Testimony](#), **Dr. Murray L. Katcher**, UW Health Department of Pediatrics, Madison

[Testimony](#), **Dr. John Conkling**, Pyrotechnics Expert, Chestertown, Maryland

[Testimony](#), **Juan Colas**, Assistant Attorney General, Department of Justice

[Testimony](#), **Richard Bucklew**, Law Enforcement Specialist, Department of Natural Resources

[Testimony](#), **Michelle Reinen**, Department of Agriculture, Trade and Consumer Protection

[Testimony](#), **Neil Cameron**, Fire Chief, City of Appleton