



TO: All Legislators

FROM: Rep. Kerkman and Rep. Steinbrink

DATE: April 19, 2007

RE: Co-sponsorship of Leg. Council study Committee on Fireworks Legislation

We are reintroducing legislation first put forward by 2003 Legislative Council Study Committee recommendations concerning fireworks law. This bill, which seeks to strengthen & clarify current restrictions on the sale of fireworks that cannot legally be used in the state, received overwhelming support from members of the study committee.

LRB 2001/1 strengthens current law to ensure that fireworks permits can only be issued to trained professionals for permitted events at specific times and locations. Some criteria that must be met for a group to obtain a permit under the proposal approved by the study committee include:

- The fireworks display in question must meet certain National Fire Protection Association Standards.
- The person obtaining the permit must be certified by a Pyrotechnics Guild International Professional. This professional must also supervise the event.
- The prospective permit holder must take out an indemnity bond or liability policy in the name of the municipality issuing the permit for payment of any claims that may arise from damage done by the fireworks display.
- The fire chief of the municipality must sign the permit in question after inspecting the site of the display, determining there is no danger to public safety and ensuring that adequate plans exist in the case of a fire.

In addition to modifying the penalties incurred for violations of these laws, a person who sells fireworks in violation can be held liable for body injury or property damage caused by fireworks use if the sale has taken place illegally.

We ask that you join the police chiefs, fire chiefs, medical professionals, prosecutors and local officials who supported these measures after months of hard work on the study committee. If you would like to cosponsor this legislation please reply to this e-mail or call Rep. Kerkman (6-2530) or Rep. Steinbrink (6-0455) by Friday, May 4.

***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, only a public authority, fair association, amusement park, park board, civic organization, agricultural producer (for the protection of crops from predatory birds or animals), or group of resident or nonresident individuals may obtain a fireworks user's permit. One current exception to the fireworks user's permit requirement authorizes a resident wholesaler to sell regulated fireworks to a person outside of this state, even if the person does not hold a permit. In *State v. Victory Fireworks, Inc.*, 230 Wis. 2d 721 (Ct. App. 1999), the court of appeals held that this exception permits a sale only to a person who is physically located outside of this state.

Current law authorizes the mayor, president, or chairperson of a municipality, or other designated municipal official or employee, to issue a fireworks user's permit. The municipality may require a person obtaining a fireworks user's permit to take out an indemnity bond or liability insurance policy for payment of any claims that may arise from the use of the fireworks. Under current law, a fire or law enforcement official of the municipality must be given a copy of a fireworks user's permit at least two days before the date of use authorized in the permit.

Under current law, a law enforcement officer may seize fireworks from a person who violates the fireworks laws. Current law also sets forth procedures that generally must be followed for the return of seized property. Among those procedures is a hearing requirement to determine ownership of the property. Currently, seized fireworks are generally exempt from these procedures. Instead, fireworks seized as evidence of a violation for which no conviction results must be returned to the owner in the same condition as when they were seized, to the extent practicable. In addition, only the fireworks that are the subject of a violation may be destroyed after conviction of a fireworks violation.

Currently, a person who violates a state law or local ordinance pertaining to the sale, possession, use, or storage of fireworks is subject to a forfeiture of not more than \$1,000. In addition, a municipality may petition the circuit court for an order enjoining violations of these fireworks laws or a local ordinance pertaining

to fireworks. A person who violates such a court order is subject to a fine of not more than \$10,000 or imprisonment of not more than nine months, or both.

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

***Fireworks userâ€™s permits and fireworks displays***

This bill generally repeals the current law with regard to fireworks userâ€™s permits, including the list of entities to whom such a permit may be issued, and instead specifies that, with limited exceptions, fireworks may be sold only to a person who holds a fireworks display permit issued by the municipality in which the fireworks display will occur. A person may obtain a fireworks display permit only for the purpose of conducting a fireworks display and only if statutory requirements are met. The bill specifies that all outdoor displays must meet certain National Fire Protection Association standards. The bill retains the provision that allows a municipality to issue a fireworks userâ€™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. The bill requires an application for a permit to identify a person certified by the Pyrotechnics Guild International who will be responsible for supervising the display. Under the bill, a municipality must require the person obtaining a fireworks display permit to take out an indemnity bond or liability insurance policy in the name of the municipality for payment of any claims that may arise from the fireworks display.

The bill also includes requirements relating to fire protection. The bill specifies that the chief of a fire department providing fire protection services to the municipality issuing a fireworks display permit must approve and sign the permit before it is issued. The bill further specifies that a fireworks display permit may not be issued unless: (a) the chief of the fire department or a fire official designated by the chief has conducted an on-site inspection of the area where the fireworks are proposed to be displayed; (b) the person conducting the inspection determines that the proposed display does not pose a danger to public safety; and (c) the person conducting the inspection determines that there are adequate plans in place for fire protection and crowd control for the proposed display.

***Fireworks wholesalers***

The bill contains several provisions regulating the sale of fireworks by wholesalers. Under the bill, no person may sell fireworks at wholesale without a fireworks wholesale license from the Department of Commerce (department). The bill directs the department to promulgate rules governing the licensing of fireworks wholesalers.

The bill allows a licensed fireworks wholesaler to sell fireworks to any person otherwise authorized to purchase fireworks, to another licensed fireworks wholesaler, or to a person who is registered with the department as a person engaged in the legal retail or wholesale sale of fireworks. The bill also codifies the decision of the court in *State v. Victory Fireworks, Inc.*, and provides that a licensed wholesaler may sell fireworks to any person who is physically located outside of this state at the time the sale is made, even though the person does not hold a permit. In addition, if a licensed wholesaler ships fireworks, the fireworks must be transported by common motor carrier, a licensed fireworks wholesaler, or a person registered with the department to purchase fireworks at wholesale. The bill requires a fireworks wholesaler to maintain a specified record of each sale of fireworks for five years.

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

### ***Penalties and enforcement***

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

1. Authorizes the appropriate district attorney to petition the circuit court for an order enjoining the violation.
2. Provides that the district attorney, the county's corporation counsel, or the attorney general may enforce an order enjoining violation of the fireworks laws.
3. Provides that a person who sells fireworks, or possesses fireworks with intent to sell them, in violation of the law may be fined not more than \$10,000 or imprisoned for not more than nine months, or both.
4. Provides that a person who is convicted of a second or subsequent violation of a state law pertaining to the possession, use, or storage of fireworks within three years of a previous violation is subject to a fine of not more than \$10,000 or imprisonment of not more than nine months, or both.
5. Clarifies that it is an affirmative defense to prosecution for a violation of fireworks laws that an item which is the subject of the prosecution is exempt from the statutory definition of "fireworks."

***Other changes***

The bill provides that a person who sells fireworks in violation of the fireworks laws may be held liable for any bodily injury to or death of others and for any damage to the property of others that is caused by the use of the fireworks.

The bill also repeals the special treatment of fireworks seized by a law enforcement official and instead makes these fireworks subject to the procedures that generally apply to seized property.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.