



## 2009 BILL

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) (intro.), 167.10 (2) (a), 167.10 (2) (b),  
4           167.10 (2) (c), 167.10 (3) (title), 167.10 (3) (e), 167.10 (3) (f) (intro.) and 4., 167.10  
5           (3) (h), 167.10 (4), 167.10 (8) (a) and (b), 167.10 (9) (b), 895.035 (7) and 895.485  
6           (2) (intro.); *to repeal and recreate* 20.143 (3) (j) and 167.10 (7) (title); and *to*  
7           **create** 167.10 (2m), 167.10 (3) (a) 2. to 6., 167.10 (3) (b) 1m., 167.10 (3) (em),  
8           167.10 (3m), 167.10 (7) (b), 167.10 (9) (bm), 167.10 (9) (bs) and 167.10 (9) (h) of  
9           the statutes; **relating to:** the sale of fireworks; fireworks permits and displays;  
10          shipping fireworks; fireworks wholesalers licenses; disposition of seized  
11          fireworks; fireworks enforcement; granting rule-making authority; making an  
12          appropriation; and providing a penalty.

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### ***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,

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or town (municipality) in which the possession or use of the fireworks will occur. Currently, a public authority, fair association, amusement park, park board, civic organization, agricultural producer (for the protection of crops from predatory birds or animals), or an individual or a group of 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 nonresident even if the person does not hold a permit.

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 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 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 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

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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, Inc., 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: 1) 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; 2) the person conducting the inspection determines that the proposed display does not pose a danger to public safety; and 3) 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 (Commerce). The bill directs Commerce 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 Commerce as a person engaged in the legal retail or wholesale sale of fireworks. The bill also eliminates the authority of a licensed wholesaler to sell fireworks to a nonresident who does not hold a permit. It provides instead 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 Commerce 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, Commerce 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.

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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.

***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, for the purpose of transferring the amounts in the schedule under  
5 par. (kg) to the appropriation account under par. (kg), and for the purpose of  
6 transferring the amounts in the schedule under par. (km) to the appropriation  
7 account under par. (km). All moneys received under ch. 145, ss. 101.177 (4) (a) 4.,  
8 101.178, 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4), 101.955 (2), 101.973  
9 (7), 167.10 (3m), and 236.12 (7), except moneys received under s. 101.9208 (2m), and

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1 all moneys transferred under 2005 Wisconsin Act 45, section 76 (6), shall be credited  
2 to this appropriation.

3 **SECTION 2.** 20.143 (3) (j) of the statutes, as affected by 2009 Wisconsin Act ....  
4 (this act), is repealed and recreated to read:

5 20.143 (3) (j) *Safety and building operations.* The amounts in the schedule for  
6 the purposes of chs. 101, 145, and 168 and ss. 167.10, 167.35, 236.12 (2) (a), 236.13  
7 (1) (d) and (2m), and 236.335, for the purpose of transferring the amounts in the  
8 schedule under par. (kg) to the appropriation account under par. (kg), and for the  
9 purpose of transferring the amounts in the schedule under par. (km) to the  
10 appropriation account under par. (km). All moneys received under ch. 145, ss.  
11 101.177 (4) (a) 4., 101.178, 101.19, 101.63 (9), 101.654 (3), 101.73 (12), 101.82 (4),  
12 101.955 (2), 101.973 (7), 167.10 (3m), 167.35 (2) (f), and 236.12 (7), except moneys  
13 received under s. 101.9208 (2m), and all moneys transferred under 2005 Wisconsin  
14 Act 45, section 76 (6), shall be credited to this appropriation.

15 **SECTION 3.** 167.10 (2) (intro.) of the statutes is amended to read:

16 167.10 (2) SALE. (intro.) ~~No~~ Except as provided under sub. (2m), no person may  
17 sell or possess with intent to sell fireworks, ~~except unless any of the following applies:~~

18 **SECTION 4.** 167.10 (2) (a) of the statutes is amended to read:

19 167.10 (2) (a) ~~To a~~ The person holding sells the fireworks to the holder of a  
20 permit under sub. (3) (e); (a) or (3g).

21 **SECTION 5.** 167.10 (2) (b) of the statutes is amended to read:

22 167.10 (2) (b) ~~To~~ The person sells the fireworks to a city, village, or town; or,

23 **SECTION 6.** 167.10 (2) (c) of the statutes is amended to read:

24 167.10 (2) (c) ~~For~~ The person sells fireworks for a purpose specified under sub.  
25 (3) (b) 2. to 6.

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1           **SECTION 7.** 167.10 (2m) of the statutes is created to read:

2           167.10 **(2m)** WHOLESAL SALES EXCEPTIONS. A fireworks wholesaler licensed  
3 under sub. (3m) (a) may sell fireworks to a person who is physically located outside  
4 of this state at the time the sale is made, at wholesale to a fireworks wholesaler  
5 licensed under sub. (3m) (a) or to a person registered with the department of  
6 commerce under sub. (3m) (b), or as authorized under sub. (2) (a) to (c).

7           **SECTION 8.** 167.10 (3) (title) of the statutes is amended to read:

8           167.10 **(3)** (title) USE AND POSSESSION; DISPLAYS.

9           **SECTION 9.** 167.10 (3) (a) of the statutes is renumbered 167.10 (3) (a) 1. and  
10 amended to read:

11           167.10 **(3)** (a) 1. ~~No~~ Except as provided in par. (b) and sub. (3g), a person may  
12 possess or use fireworks without only for the purpose of conducting a display  
13 pursuant to a user's fireworks display permit obtained by the person directly from  
14 the mayor of the city, president of the village or chairperson of the town city, village,  
15 or town in which the possession or use display is to occur or from an official or  
16 employee of that municipality designated by the mayor, president or chairperson.  
17 ~~No person may use fireworks or a device listed under sub. (1) (e) to (g) or (i) to (n) while~~  
18 ~~attending a fireworks display for which a permit has been issued to a person listed~~  
19 ~~under par. (c) 1. to 5. or under par. (c) 6. if the display is open to the general public.~~  
20 An official or employee of a city, village, or town may issue a permit under this  
21 paragraph only at a location where he or she, in the normal course of municipal  
22 affairs, carries out his or her official responsibilities.

23           **SECTION 10.** 167.10 (3) (a) 2. to 6. of the statutes are created to read:

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1           167.10 (3) (a) 2. A person applying for a permit under this paragraph shall  
2 submit the application at least 20 days before the proposed date of the fireworks  
3 display.

4           3. A person applying for a permit under this paragraph shall identify a person  
5 certified by the Pyrotechnics Guild International, Inc., who will be responsible for  
6 supervising the display and shall include the Pyrotechnics Guild International, Inc.,  
7 certificate number of that person on the application.

8           4. The chief of a fire department providing fire protection to the city, village,  
9 or town shall approve and sign each permit issued under this paragraph after par.  
10 (em) is satisfied, but before the permit is issued by the city, village, or town. The fire  
11 chief shall retain a copy of each permit that he or she approves and signs.

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

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

17           **SECTION 11.** 167.10 (3) (b) 1m. of the statutes is created to read:

18           167.10 (3) (b) 1m. The possession of fireworks that are offered for sale as  
19 authorized under sub. (2) or (3m), by the person offering the fireworks for sale.

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

22           167.10 (3) (c) A permit under ~~this subsection~~ par. (a) may be issued only to the  
23 following persons: for the purpose of conducting a fireworks display. No person may  
24 conduct an outdoor fireworks display unless the display meets the requirements of

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1 National Fire Protection Association standard NFPA 1123, Code for Fireworks  
2 Display, 2006 edition, approved by the American National Standards Institute.

3 **SECTION 13.** 167.10 (3) (c) 1. to 7. of the statutes are repealed.

4 **SECTION 14.** 167.10 (3) (d) of the statutes is renumbered 167.10 (3g) and  
5 amended to read:

6 167.10 **(3g)** CROP PROTECTION. In addition to issuing permits under sub. (3), a  
7 city, village, or town may issue a permit authorizing an agricultural producer to  
8 purchase, possess, and use fireworks for the protection of crops from predatory birds  
9 or animals. The city, village, or town shall provide a copy of any permit issued under  
10 this subsection to the chief of a fire department providing fire protection to the city,  
11 village, or town. A permit may not be issued under this subsection to a minor. A  
12 person issued a permit for ~~crop protection~~ under this subsection shall erect  
13 appropriate warning signs disclosing the use of fireworks for crop protection.

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

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



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

2           167.10 **(3)** (em) A city, village, or town may issue a permit under par. (a) only  
3 if all of the following apply:

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

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

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

13           **SECTION 17.** 167.10 (3) (f) (intro.) and 4. of the statutes are amended to read:

14           167.10 **(3)** (f) (intro.) A permit under ~~this subsection~~ par. (a) shall specify all of  
15 the following:

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

18           **SECTION 18.** 167.10 (3) (g) of the statutes is repealed.

19           **SECTION 19.** 167.10 (3) (h) of the statutes is amended to read:

20           167.10 **(3)** (h) A permit under ~~this subsection~~ par. (a) may not be issued to a  
21 minor.

22           **SECTION 20.** 167.10 (3m) of the statutes is created to read:

23           167.10 **(3m)** WHOLESALE LICENSES; REGISTRATION OF WHOLESALE PURCHASERS. (a)

24           1. No person may sell fireworks in this state to a fireworks wholesaler who is licensed

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1 in this state or to a person who is registered with the department of commerce under  
2 par. (b) without a fireworks wholesale license from the department of commerce.

3 2. An applicant for a fireworks wholesale license shall file the application upon  
4 forms that are furnished upon request by the department of commerce. The  
5 application shall state the applicant's name and business address, a description of  
6 the products that are to be sold, and any other relevant information that the  
7 department of commerce requires.

8 3. A licensed fireworks wholesaler shall maintain a record of each sale of  
9 fireworks for 5 years. The record shall include the name, address, and license or  
10 registration number of the purchaser, the date of purchase, and the amount and type  
11 of fireworks sold to the purchaser.

12 (b) The department of commerce shall promulgate rules governing the  
13 licensing of fireworks wholesalers and the annual registration of wholesale  
14 purchasers. The rules shall require an applicant for registration to provide proof,  
15 other than a signed statement, that the person is engaged in the legal retail or  
16 wholesale sale of fireworks. The department of commerce shall assign a registration  
17 number to each person meeting the requirements for registration. The rules shall  
18 specify a license and registration fee and enforcement procedures, including a  
19 procedure for the suspension or revocation of a license held by a licensee who violates  
20 this section or any other state or federal laws or regulations pertaining to fireworks.

21 **SECTION 21.** 167.10 (4) of the statutes is amended to read:

22 167.10 (4) ~~OUT-OF-STATE AND IN-STATE SHIPPING~~ SHIPPING BY WHOLESALERS. ~~This~~  
23 ~~section does not prohibit a resident wholesaler or jobber from selling fireworks to a~~  
24 ~~nonresident person or to a person or group granted a permit under sub. (3) (c) 1. to~~  
25 7. A resident fireworks wholesaler or jobber licensed under sub. (3m) (a) that ships

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1 fireworks ~~sold under this subsection~~ shall package and ship the fireworks in  
2 accordance with applicable state and federal law ~~by~~. Only a common motor carrier,  
3 ~~as defined in s. 194.01 (1), (2) and (11), common motor carrier, contract motor carrier~~  
4 ~~or private motor carrier~~ a fireworks wholesaler licensed under sub. (3m) (a), or a  
5 wholesale purchaser registered under sub. (3m) (b) may transport fireworks under  
6 this subsection.

7 **SECTION 22.** 167.10 (7) (title) of the statutes is repealed and recreated to read:

8 167.10 (7) (title) LIABILITY.

9 **SECTION 23.** 167.10 (7) of the statutes is renumbered 167.10 (7) (a).

10 **SECTION 24.** 167.10 (7) (b) of the statutes is created to read:

11 167.10 (7) (b) A person who sells fireworks in violation of sub. (2) may be held  
12 liable for any bodily injury to or death of others and for any damage to the property  
13 of others that is caused by the use of the fireworks.

14 **SECTION 25.** 167.10 (8) (a) and (b) of the statutes are amended to read:

15 167.10 (8) (a) A city, village, or town may petition the circuit court for an order  
16 enjoining violations of sub. (2), (3), or (6) or an ordinance adopted under sub. (5)  
17 within the city, village, or town. A district attorney of a county where violations of  
18 sub. (2), (3), or (6) occur or the attorney general may petition the circuit court for an  
19 order enjoining the violations. The district attorney, the corporation counsel, or the  
20 attorney general may enforce an order under this subsection.

21 (b) Fireworks stored, handled, sold, possessed, or used by a person who violates  
22 this section, an ordinance adopted under sub. (5), or a court order under par. (a) may  
23 be seized and held as evidence of the violation. ~~Except as provided in s. 968.20 (4),~~  
24 ~~only the fireworks that are the subject of a violation of this section, an ordinance~~  
25 ~~adopted under sub. (5) or a court order under par. (a) may be destroyed after~~

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1 ~~conviction for a violation. Except as provided in s. 968.20 (4), fireworks that are~~  
2 ~~seized as evidence of a violation for which no conviction results shall be returned to~~  
3 ~~the owner in the same condition as they were when seized to the extent practicable.~~

4 **SECTION 26.** 167.10 (9) (b) of the statutes is amended to read:

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

10 **SECTION 27.** 167.10 (9) (bm) of the statutes is created to read:

11 167.10 (9) (bm) A person who violates sub. (2) may be fined not more than  
12 \$10,000 or imprisoned for not more than 9 months or both.

13 **SECTION 28.** 167.10 (9) (bs) of the statutes is created to read:

14 167.10 (9) (bs) A person who violates an ordinance enacted under sub. (5) may  
15 be required to forfeit not more than \$1,000.

16 **SECTION 29.** 167.10 (9) (h) of the statutes is created to read:

17 167.10 (9) (h) It is an affirmative defense to prosecution for a violation of this  
18 section that an item that is the subject of the prosecution does not fall within the  
19 scope of the definition of “fireworks” under sub. (1).

20 **SECTION 30.** 895.035 (7) of the statutes is amended to read:

21 895.035 (7) This section does not affect or limit any liability of a parent under  
22 s. 167.10 (7) (a) or 343.15 (2).

23 **SECTION 31.** 895.485 (2) (intro.) of the statutes is amended to read:

