

FIREWORKS TASKFORCE

Ald. Joe Davis, Chair
Ald. Terry Witkowski, Vice Chair



Informational Packet

Prepared by:
Leslie Silletti
Legislative Reference Bureau
January 11, 2007

LRB07002

TABLE OF CONTENTS

I. State of Wisconsin Fireworks Law.....	1
II. City of Milwaukee's Fireworks Prohibition.....	5
III. Purchasing Fireworks in Neighboring Communities.....	6
IV. Border States' Fireworks Laws.....	7
V. Police Department Policy and Municipal Court Charges.....	11
VI. Fireworks-related Injuries.....	12

I. State of Wisconsin Fireworks Law

Fireworks are regulated by s. 167.10, Wis. Stats. The state prohibits the sale, possession and use of all fireworks, with a few exceptions, including toy snakes which contain no mercury, caps, fountains and sparklers. Fireworks are permitted only for persons holding permits, cities, villages and towns, and for reasons (as outlined in the statute) of education, manufacturing, commerce and hazardous removal. Permits are issued only to organizations, not to individuals for the purchase of fireworks for personal use. A resident wholesaler may sell fireworks to persons outside the state if the fireworks are shipped to an out of state location, or to persons holding permits.

State law provides that municipalities may enact ordinances that further restrict the sale, possession and use of fireworks. Municipalities may restrict:

- Caps containing not more than $\frac{1}{4}$ grain of explosive mixture.
- Toy snakes which contains no mercury.
- Sparklers.
- Fuseless devices designed to produce audible or visible effects, and that contain no more than $\frac{1}{4}$ grain of explosive mixture.
- Devices that are primarily used for burning pyrotechnic smoke.
- Cylindrical fountains that consist of one or more tubes.
- Cone fountains.

Following is a copy of the statute.

CHAPTER 167

SAFEGUARDS OF PERSONS AND PROPERTY

- 167.07 Manufacture, storage and distribution of matches.
- 167.10 Regulation of fireworks.
- 167.11 Hazardous substances.
- 167.12 Safety appliances.
- 167.13 Operation.
- 167.14 Sale regulated.
- 167.151 Unlawful operation of corn shredders.
- 167.18 Threshing machine joints to be covered.
- 167.19 Farm machinery storage.

- 167.20 Stairway guards.
- 167.22 Cigars not to be manufactured in basements.
- 167.25 Refrigerators and iceboxes.
- 167.26 Leaving unguarded ice holes.
- 167.27 Capping and filling wells or similar structures.
- 167.30 Use of firearms, etc., near park, etc.
- 167.31 Safe use and transportation of firearms and bows.
- 167.32 Safety at sporting events.

167.07 Manufacture, storage and distribution of matches. (1) No person may manufacture, store, offer for sale, sell, or otherwise dispose of or distribute, any of the following:

- (a) White phosphorus, single-dipped, strike-anywhere matches of the type popularly known as "parlor matches".
- (b) White phosphorus, double-dipped, strike-anywhere matches, or other type of double-dipped matches, unless the bulb or first dip of such match is composed of a so-called safety or inert composition, nonignitable on an abrasive surface.
- (c) Matches which, when packed in a carton of 500 approximate capacity and placed in an oven maintained at a constant temperature of 200 degrees Fahrenheit, will ignite in 8 hours.
- (d) Blazer, or so-called wind matches, whether of the so-called safety or strike-anywhere type.

(2) (a) No person may do any of the following:

1. Offer for sale, sell or otherwise dispose of or distribute any matches, unless the package or container in which such matches are packed bears plainly marked on the outside thereof the name of the manufacturer and the brand or trademark under which such matches are sold, disposed of or distributed.

2. Open more than one case of each brand of matches of any type or manufacture at any one time in a retail store where matches are sold or otherwise disposed of.

3. Keep loose boxes or paper-wrapped packages of matches on shelves or stored in a retail store at a height exceeding 5 feet from the floor.

(b) All matches stored in warehouses, except manufacturers' warehouses at the place of manufacture, that contain automatic sprinkler equipment shall be subject to each of the following conditions:

- 1. The matches shall be kept only in properly secured cases.
- 2. The matches shall not be piled to a height exceeding 10 feet from the floor.
- 3. The matches shall not be stored within a horizontal distance of 10 feet from any boiler, furnace, stove or other similar heating apparatus.
- 4. The matches shall not be within a horizontal distance of 25 feet from any explosive material kept or stored on the same floor.

(c) All matches shall be packed in boxes or suitable packages, containing not more than 700 matches in any one box or package. If more than 300 matches are packed in any one box or package, the matches shall be arranged in 2 nearly equal portions, with the heads of the matches in the 2 portions placed in opposite directions. All boxes containing 350 or more matches shall have placed over the matches a center holding or protecting strip, made of chipboard, not less than 1.25 inches wide and the strip shall be flanged down to hold the matches in position when the box is nested into the shuck or withdrawn from it.

(3) All match boxes or packages shall be packed in strong shipping containers or cases; maximum number of match boxes

or packages contained in any one shipping container or case, shall not exceed the following number:

Number of Boxes	Nominal Number of Matches per Box
One-half gross	700
One gross	500
Two gross	400
Three gross	300
Five gross	200
Twelve gross	100
Twenty gross	over fifty and under 100
Twenty-five gross	under 50

(4) No shipping container or case constructed of fiber board, corrugated fiber board, or wood, nailed or wirebound, shall exceed a weight, including its contents, of 75 pounds; and no lock-cornered wooden case containing matches shall have a weight, including its contents, exceeding 85 pounds; nor shall any other article or commodity be packed with matches in any such container or case; and all such containers and cases in which matches are packed shall have plainly marked on the outside of the container or case the words "Strike-Anywhere Matches" or "Strike-on-the-Box Matches".

(5) Any person, association or corporation violating this section shall be fined for the first offense not less than \$5 nor more than \$25, and for each subsequent violation not less than \$25.

History: 1997 a. 254.

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

- (a) Fuel or a lubricant.
- (b) A firearm cartridge or shotgun shell.
- (c) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
- (d) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
- (e) A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
- (f) A toy snake which contains no mercury.
- (g) A model rocket engine.
- (h) Tobacco and a tobacco product.
- (i) A sparkler on a wire or wood stick not exceeding 36 inches in length that is designed to produce audible or visible effects or to produce audible and visible effects.

167.10 SAFEGUARDS

(j) A device designed to spray out paper confetti or streamers and which contains less than one-quarter grain of explosive mixture.

(k) A fuseless device that is designed to produce audible or visible effects or audible and visible effects, and that contains less than one-quarter grain of explosive mixture.

(L) A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces audible or visible effects, or audible and visible effects.

(m) A cylindrical fountain that consists of one or more tubes and that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.

(n) A cone fountain that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.

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

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

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

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

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

2. The possession or use of explosives in accordance with rules or general orders of the department of commerce.

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

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

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

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

7. Except as provided in par. (bm), the possession of fireworks in any city, town or village while transporting the fireworks to a city, town or village where the possession of the fireworks is authorized by permit or ordinance.

(bm) Paragraph (a) applies to a person transporting fireworks under par. (b) 7. if, in the course of transporting the fireworks through a city, town or village, the person remains in that city, town or village for a period of at least 12 hours.

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

1. A public authority.
2. A fair association.
3. An amusement park.
4. A park board.
5. A civic organization.
6. A group of resident or nonresident individuals.
7. An agricultural producer for the protection of crops from predatory birds or animals.

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

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

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

1. The name and address of the permit holder.
2. The date on and after which fireworks may be purchased.
3. The kind and quantity of fireworks which may be purchased.
4. The date and location of permitted use.
5. Other special conditions prescribed by ordinance.

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

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

(4) OUT-OF-STATE AND IN-STATE SHIPPING. 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 under sub. (3) (c) 1. to 7. A resident wholesaler or jobber that ships the fireworks sold under this subsection shall package and ship the fireworks in accordance with applicable state and federal law by, as defined in s. 194.01 (1), (2) and (11), common motor carrier, contract motor carrier or private motor carrier.

(5) LOCAL REGULATION. (a) Subject to pars. (b) to (e), a city, village, town or county may enact an ordinance for any of the following:

1. Defining "fireworks" to include all items included under sub. (1) (intro.) and anything under sub. (1) (e), (f), (i), (j), (k), (L), (m) and (n).
2. Prohibiting the sale, possession or use, as defined by ordinance, of fireworks.
3. Regulating the sale, possession or use, as defined by ordinance, of fireworks.

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

(d) A county ordinance enacted under par. (a) does not apply and may not be enforced within any city, village or town that has enacted or enacts an ordinance under par. (a).

(e) Notwithstanding par. (a) or par. (b), no city, village, town or county may enact an ordinance that prohibits the possession of fireworks in that city, town, village or county while transporting the fireworks to a city, town, village or county where the possession of the fireworks is authorized by permit or ordinance.

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

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

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

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

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

(6m) LICENSING AND INSPECTING MANUFACTURERS. (a) No person may manufacture in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) without a fireworks manufacturing license issued by the department of commerce under par. (d).

(b) No person may manufacture in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) unless the person complies with the rules of the department of commerce promulgated under par. (e).

(c) Any person who manufactures in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) shall provide the department of commerce with a copy of each federal license issued under 18 USC 843 to that person.

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

(e) The department of commerce shall promulgate rules to establish safety standards for the manufacture in this state of fireworks and devices listed under sub. (1) (e), (f) or (i) to (n).

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

(7) PARENTAL LIABILITY. A parent, foster parent, treatment foster parent, family-operated group home parent or legal guardian of a minor who consents to the use of fireworks by the minor is liable for damages caused by the minor's use of the fireworks.

(7m) MUNICIPAL LIABILITY. 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 for the sole reason that the city, village, or town issued a permit in accordance with the requirements of sub. (3) and any applicable requirements authorized under sub. (5), that authorized the purchase, possession, or use of the fireworks.

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

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

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

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

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

(g) Whoever violates sub. (6m) (a), (b) or (c) or a rule promulgated under sub. (6m) (e) is guilty of a Class G felony.

History: 1977 c. 260; 1983 a. 446, 538; 1985 a. 135; 1987 a. 377; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 258; 1993 a. 208, 446, 491; 1995 a. 27 ss. 4464 to 4469 and 9116 (5); 1995 a. 330; 1997 a. 3, 35, 283; 2001 a. 109; 2003 a. 298.

NOTE: 2003 Wis. Act 298, which created sub. (7m), contains explanatory notes.

Cross Reference: See also ss. Comm 5.21 and 9.01, Wis. adm. code.

Sub. (4) may be violated in 3 ways: 1) the improper delivery of fireworks legitimately sold at wholesale; 2) the sale of fireworks at retail; or 3) both. Wholesale under sub. (4) is defined as the sale of goods in quantity for resale. *State v. Seigel*, 163 Wis. 2d 871, 472 N.W.2d 584 (Ct. App. 1991).

A fireworks purchaser must have a federal license, hold a valid permit under this section or be a municipality. There is no exception from this requirement because the seller holds a federal license. *City of Wisconsin Dells v. Dells Fireworks, Inc.* 197 Wis. 2d 1, 539 N.W.2d 916 (Ct. App. 1995).

Fireworks permits issued to groups do not authorize sales of fireworks to group members for their individual use. *City of Wisconsin Dells v. Dells Fireworks, Inc.* 197 Wis. 2d 1, 539 N.W.2d 916 (Ct. App. 1995), 94-1999.

Sub. (4) allows sales to purchasers physically outside of the state's boundaries but does not permit sales within the state's boundaries to nonresidents. Sub. (4) permits the purchase of restricted fireworks within the state only by purchasers with a permit or who fit within a specified exception under sub. (2). *State v. Victory Fireworks, Inc.* 230 Wis. 2d 721, 602 N.W.2d 128 (Ct. App. 1999), 99-0243.

167.11 Hazardous substances. (1) No person shall sell, offer for sale or otherwise distribute any package of a substance which when mixed with organic matter will cause spontaneous combustion under reasonably anticipated conditions of use or handling unless the package bears a label clearly warning that the substance will create a fire hazard when so mixed.

(2) The department of commerce shall, by rule, set forth the nature of such warning and shall enforce this section.

(3) Any person violating this section may be fined not less than \$25 nor more than \$100 for each offense.

History: 1995 a. 27, ss. 4470 and 9116 (5).

167.12 Safety appliances. Any person, firm, or corporation who shall sell, offer or expose for sale, or use any machine to be operated by steam, or other power, for the purpose of husking or shredding corn or corn stalks shall provide such machine with safety or automatic feeding devices for the protection from accident by the snapping rollers, husking rollers, and shredding knives of any person using or operating such machine in the discharge of their duty, and such machine shall be so guarded that the person feeding said machine shall be compelled to stand at a safe distance from the snapping rollers; and any person, firm, or corporation operating such machine shall maintain thereon such safety or automatic feeding devices. The duty to equip such machine with safety or automatic feeding devices, as well as the duty to maintain the same, shall be absolute; and the exercise of ordinary care on the part of such person, firm, or corporation operating such machine shall not be deemed a compliance with such duty; and in case any person in the employ of such person, firm, or corporation operating such machine continues in such employment when such device has not been installed and maintained, as above provided, such employee shall not be deemed guilty of a want of ordinary care, on account of so continuing in such employment.

167.13 Operation. No person, firm or corporation shall use, operate or permit to be used or operated any such machine purchased prior to June 12, 1909, unless during all the time such machine shall be used and operated it shall be in charge of a competent person whose sole duty shall be to oversee and attend to the operation and use of the same; nor use, operate or permit to be used or operated any such machine whatever while the safety devices or guards are detached.

167.14 Sale regulated. No such machine shall be sold or offered or exposed for sale unless the said machine shall have plainly marked upon it the name and location of the person, firm or corporation manufacturing the same.

167.151 Unlawful operation of corn shredders. Any person, firm or corporation who shall violate any of the provisions

II. City of Milwaukee's Fireworks Prohibition

In s. 105-47 of the Milwaukee Code, the City prohibits all fireworks containing any explosives of flammable compound, **which effectively is a prohibition on all fireworks**. The ordinance was passed by the Common Council in April, 1983, and signed by Mayor Maier.

105-47. Fireworks.

1. *SALES. DISCHARGE AND USE PROHIBITED. No person may sell, expose or offer for sale, use, keep or discharge, or explode in this city any firecracker, bottle rocket, cherry bomb, colored smoke bomb, toy cap, blank cartridge, toy pistol or cannon in which explosives are used, contrivances using explosive caps or cartridges, sparklers, display wheels, the type of balloon which requires fire underneath to propel it, torpedoes, sky rockets, Roman candles, aerial salutes, American or Chinese bombs or other fireworks of like construction, or any other fireworks containing any explosives of like construction, or any fireworks containing any explosives of flammable compound, or any tablets or other device commonly used and sold as fireworks containing nitrates, chlorates, oxylates, sulphites or lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus, or any compound containing any of the same or other explosives.*
2. *STORAGE AND WHOLESALING. This section does not prohibit any resident, wholesaler, dealer or jobber firm from selling fireworks at wholesale, provided they are shipped or delivered directly outside the city limits.*
3. *PENALTY. Any person violating this section shall upon conviction forfeit not less than \$100 nor more than \$500, and upon default thereof shall be imprisoned in the county jail or house of correction for a period not to exceed 10 days, or until the forfeiture and costs are paid.*

III. Purchasing Fireworks in Neighboring Communities. A June, 1983, Milwaukee Journal article, "Fireworks Illegal But Still Available," discusses the problem of Milwaukee residents purchasing fireworks in neighboring communities which may have lesser restrictions.

Fireworks illegal but still available

By M.I. Blackwell
of The Journal Staff

Although the Fourth of July is still four days away, you can already hear the crackling, popping and whistling sounds of fireworks exploding in the city and suburbs.

The ones you hear in the city are illegal.

Even though all fireworks — including sparklers, smoke bombs and caps for toy cap guns — are illegal in Milwaukee, they apparently are available in some sections of the city. They can be bought legally in nearby suburban communities, but are not supposed to be used in the city.

One Milwaukee man interviewed this week said he had purchased fireworks from an inner city location that he did not identify.

"Explosives sell the best," said Bob Brammer, operator of a legal fireworks stand at the corner of Mequon and Wauwatosa Rds. in Mequon. "A lot of people come here and buy the jumping jacks and crazy jacks, close cousins to the firecracker.

They say they are going to shoot them off on a cousin's farm, but I'm sure they plan to shoot them off in the city."

Law to be enforced

A Milwaukee police official says authorities will enforce the city's new ordinance banning fireworks. Although some nearby municipalities allow the sale of sparklers, rockets and other devices, the Milwaukee Common Council unanimously approved a fireworks ordinance on April 27, banning the use, sale and possession of any fireworks within city limits.

The ordinance only allows fireworks to be exploded if they are publicly sponsored, such as at displays planned for Summerfest and the annual lakefront show Sunday. The show, near the War Memorial Center, starts at 9:30 p.m.

Violators of the city ordinance face fines of up to \$500. The council took the action because of complaints by residents, for safety reasons and because the state law was difficult to enforce.

Safety experts say each year that there are numerous accidents related to the explosion of fireworks.

Some municipalities allow the sale of Class C fireworks, such as sparklers, bottle rockets and firecrackers. But under federal regulations, enacted in 1976, the amount of explosives permissible in firecrackers is 50 milligrams.

Since 1886, the federal government has prohibited the sale of Class B, fireworks, such as M-80s and blockbusters, in all states.

28 states have bans

The Common Council's crackdown follows the lead of other governmental units, including 28 states that have banned backyard fireworks outright. The list includes the neighboring states of Illinois and Minnesota.

A bill banning the sale and use of all fireworks in Wisconsin, except for civic functions, is pending in the Senate Judiciary Committee. State Sen. Lynn Adelman (D-New Berlin), chairman of the committee, said the bill would be reintroduced on the Senate floor for action this fall. The bill has been defeated twice.

Although Milwaukee's Common Council banned fireworks, the prohibition apparently has not stopped city residents from purchasing them. Nor has it stopped them from shooting them off on the streets or in alleys.

"It would be unbelievable if they haven't exploded fireworks," said a city police officer. "I've been making the rounds and complaints have been popping up all over."

Mostly city residents

Under a tent at his stand in Mequon, two miles north of the city limits, Brammer estimated that 70% of his business was done with Milwaukee residents. Brammer sells a variety of fireworks paraphernalia that includes smoke bombs, sparklers, California candles and crazy jacks, which are similar to firecrackers.

When told that all fireworks are now illegal in the city, the man who said he bought fireworks in the city said, "I know now to look behind me before I shoot anything off."

About enforcement, Inspector LeRoy Jahnke said: "We are going to be doing everything we can to stop it. Let them beware that we are enforcing the ordinance."

IV. Border States' Fireworks Laws. Following is an excerpt from “*Review of Wisconsin Fireworks Law,*” prepared by the Wisconsin Legislative Council, which provides an overview of border states’ fireworks laws.¹ The Joint Legislative Council established the Special Committee on Review of Fireworks Law to “Study issues surrounding the sale, possession and use of fireworks in Wisconsin; review current law regulating fireworks, including the interaction between state and federal law and the impact of fireworks retailers, local units of government, the law enforcement community, the state economy, and the public; and recommended improvements into law.”

¹ Wisconsin Legislative Council . “*Special Committee Staff Brief 02-6: Review of Fireworks Law.*” , September 4, 2002.

PART III

BORDER STATES' FIREWORKS LAWS

The states bordering Wisconsin (Michigan, Minnesota, Illinois, and Iowa) generally have laws that are as restrictive or even somewhat more restrictive than those in Wisconsin. A summary discussion of the Wisconsin border states' laws follows.

A. MICHIGAN

Michigan statutes generally prohibit the sale, possession, transportation, and use of devices made from explosive or flammable compositions that are used primarily for producing a visual display or audible effect. The following devices are specifically prohibited: firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, bottle rockets, whistling chasers, bombs, or other fireworks of similar construction. Specifically permitted are paper caps with .25 of a grain of explosive or less per cap, toys which use such caps that are approved by the director of the department of the state police, sparklers containing not more than .0125 pounds of burning portion per sparkler, flitter sparklers in paper tubes not exceeding 1/8 of an inch in diameter, cone fountains, cylinder fountains, certain toy snakes, and toy smoke devices. In addition, the use of certain signal flares and blank cartridges and pistols are permitted under specified circumstances. [s. 750.243a, Michigan Penal Code.]

Michigan statutes provide that a municipality may grant a permit for the use of fireworks that are otherwise prohibited, within their political jurisdiction, for public display by a municipality, fair association, amusement park or other organization, or group of individuals approved by the municipality. [s. 750.243b (1), Michigan Penal Code.] Before a permit for a fireworks display may be issued, the person, firm, or corporation applying for the permit must furnish proof of financial responsibility by a bond or insurance in an amount deemed necessary by the local governing authority to satisfy claims for damages to property or personal injuries arising out of an act or omission of the person, firm, or corporation. [s. 750.243b (3), Michigan Penal Code.]

Michigan law provides that fireworks may be transported within the state only if a permit authorizing possession of those fireworks has been issued by a municipality. Further, all fireworks transported in the state must be transported in accordance with the U.S. Department of Transportation regulations for transportation of explosives and other dangerous articles by motor, rail, and water, including specifications for shipping containers. The fireworks may only be transported in nonpassenger carrying vehicles that are equipped with a 15-pound carbon dioxide or a 10-pound dry chemical fire extinguisher. [s. 750.243c, Michigan Penal Code.]

The sale of prohibited fireworks is permitted only if the fireworks are shipped directly out of the state and pursuant to U.S. Department of Transportation regulations. [s. 750.243a, Michigan Penal Code.]

B. MINNESOTA

Minnesota law generally prohibits the sale, possession, and use of fireworks including: firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, bottle rockets, whistling chasers, bombs, or other fireworks of similar construction. Minnesota law also prohibits any fireworks containing any explosive or inflammable compound, or any tablets or other device containing an explosive substance commonly used as fireworks. As of April 30, 2002, Minnesota law permits the sale, possession, and use of certain nonexplosive and nonaerial fireworks. Examples of permitted fireworks include sparklers of up to 100 grams of mixture per item, other sparkling items which contain 75 grams or less of chemical mixture per tube or 200 grams total for multiple tubes, snakes and glowworms, smoke devices and poppers containing .25 grains of explosive mixture. The use of permitted fireworks is prohibited on public property and purchasers must be at least 18 years of age. [ss. 624.20 and 624.21, Minn. Stats.]

A municipality may issue a permit for a fireworks display only to an operator certified by the state fire marshal. In order to be certified as an operator, a person must have achieved a passing score on a written examination regarding standards of safe practices for the discharge and display of fireworks. All applications for a fireworks display permit must be referred to the chief of the local fire department who must make an investigation to determine: (1) whether the operator of the display is competent and is certified by the state fire marshal; and (2) whether the display will be hazardous to property or endanger any person. After a permit has been granted, sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only. [s. 624.22, Minn. Stats.]

The general prohibition on the sale of fireworks does not prohibit the possession or sale of any kind of fireworks for shipment directly out of state. [s. 624.23, Minn. Stats.]

C. ILLINOIS

Illinois statutes generally prohibit the possession, sale, and use of explosive or combustion fireworks, including all of the following: firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, bottle rockets, whistling chasers, bombs, or other fireworks of similar construction. Illinois law permits the use of sparklers, glow worms and snakes, smoke devices, trick noisemakers and caps containing .025 grain or less explosive compound. State law specifically allows municipalities to prohibit the sale and use of sparklers on public property. [425 ILCS 35/1.]

Illinois law authorizes municipalities to adopt reasonable rules and regulations for the granting of permits for *supervised public displays of fireworks*. A permit may be granted to a group of three or more adult individuals and may only be issued after inspection of the display site by the issuing officer to determine that the display will not be hazardous to property or endanger any person. A bond of at least \$1,000 must be filed for all permit requestors who are not municipalities. [425 ILCS 35/2.]

Illinois law does not prohibit the sale of any kind of fireworks provided the fireworks are shipped directly out of the state. [425 ILCS 30/13.1.]

D. IOWA

Iowa statutes generally prohibit the sale and use of fireworks, which includes all of the following: firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, bottle rockets, whistling chasers, bombs or other fireworks of similar construction, and fireworks that contain any explosive or flammable compound or other device containing any explosive substance. Iowa law expressly permits the use of goldstar-producing sparklers which do not contain magnesium, chlorate or perchlorate, flitter sparklers in paper tubes that do not exceed 1/8 of an inch in diameter, toy snakes that do not contain mercury, and caps used in cap pistols. [s. 727.2, Iowa Code.]

Iowa law authorizes a city or county to grant a permit for the display of fireworks by a municipality, fair association, amusement park, or other organization or group of individuals approved by the city or county when a competent operator will handle the fireworks display. [s. 727.2, Iowa Code.]

Iowa law does not prohibit the sale of fireworks if they are shipped out of state. [s. 727.2, Iowa Code.]

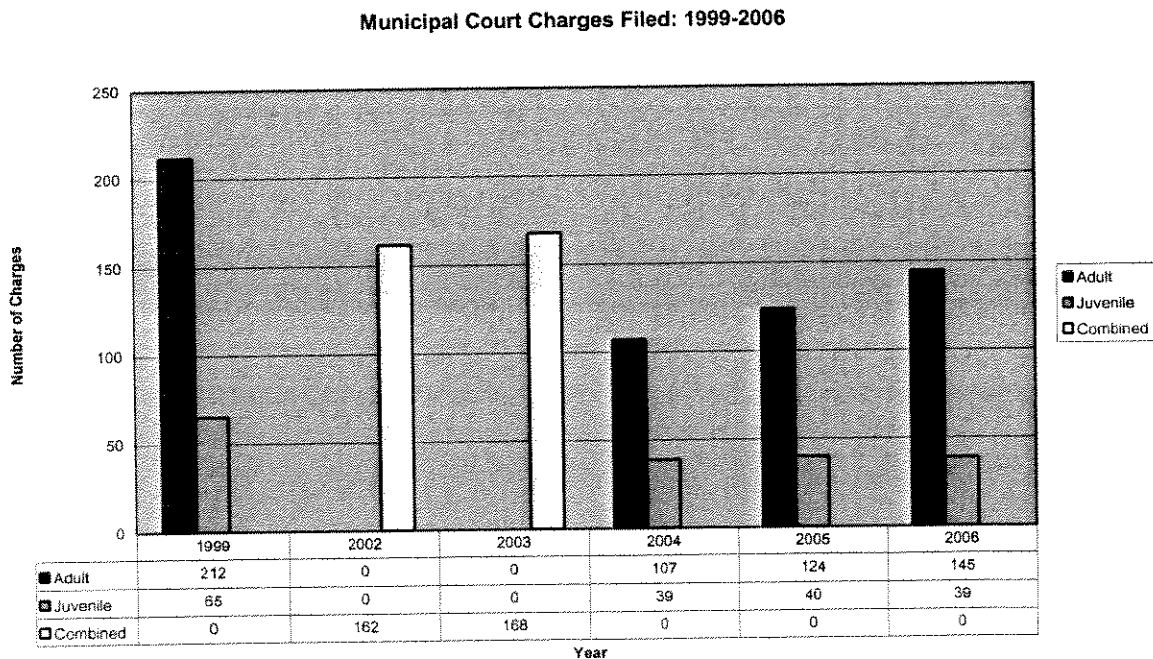
V. Police Department Policy and Municipal Court Charges

Police Department Enforcement Policy

A representative of the Police Department stated that if officers are sent to or come across fireworks, they will confiscate the fireworks and issue citations (if they are able to identify who was responsible). Officers are given reminders in the weeks preceding holidays linked to increased prevalence of fireworks.

Municipal Court Charges

The following graph shows municipal court charges for violations of 105-47, the prohibition against fireworks. Data are either available with juvenile and adult violations combined or segregated; no data were available for years 2000 and 2001.



VI. Fireworks-related Injuries

All government and health organizations agree that fireworks, illegal and legal, pose a threat to persons engaged in igniting them, bystanders and nearby structures and vehicles. Additionally, fireworks pose a threat to forests, as illegal or inappropriate use may lead to forest fires. Researchers believe that fireworks-related injury rates correlate to the restrictions imposed by state laws. Wisconsin has a fairly restrictive fireworks law, which is further strengthened by the City of Milwaukee's fireworks ordinance.

Even though the City of Milwaukee prohibits the sale and use of all fireworks, fireworks still pose health risks and are obvious public nuisances, especially around holidays associated with fireworks displays, especially the 4th of July.

Following is information relating to fireworks-related injuries:

The Center for Disease Control²

The Center for Disease Control attributes fireworks-related injuries to the following: the availability of illegal fireworks, often in bordering states with less prohibitions; being too close to fireworks when they explode; unsupervised use; lack of physical coordination; curiosity; and experimentation. The CDC stated that the degree of state regulation of the sale and use of fireworks affect the number of fireworks-related injuries.

- In 2003, 4 people died and about 9,300 people were treated in emergency rooms for fireworks-related injuries in the U.S.
- It is estimated that 5% of fireworks-related injuries treated in emergency rooms require hospitalization.
- Most injured persons are male.
- Children ages 5 to 9 years have the highest injury rate, and 45% are ages 14 years and younger.
- Those who are participating in fireworks-related activities are injured more frequently, and sustain more frequent injuries, than bystanders.
- Most injuries occur on and around holidays associated with fireworks celebrations, especially July 4th and New Year's Eve.
- Most injuries occur in homes, though other common locations are recreational settings, streets or highways and parking lots.

² Facts reprinted from the Center for Disease Control, "Fireworks-Related Injuries."
<http://www.cdc.gov/ncipc/factsheets/fworks.htm>

- Injuries most frequently involve hands and fingers (26%), eyes (21%) and the head and face (18%). More than half of injuries are burns (63%), and the second most frequent injuries are contusions and lacerations (18%), followed by fracture and sprain.
- Firecrackers (24%), rockets (18%) and sparklers (11%) accounted for most of the injuries seen in emergency departments during 2003.
- Sparklers were associated with the most injuries for children under 5 years.
- In 1999, U.S. fire departments reported approximately 24,200 fireworks-related fires that were estimated to cost \$17.2 million in direct property damage.

The Medical College of Wisconsin³

According to the United States Eye Injury Registry, approximately 12,000 Americans are treated in emergency rooms annually for fireworks-related injuries. Most injuries are from bottle rockets.

The Consumer Protection Safety Commission (all data for 2001)⁴

- Fireworks were involved in approximately 9,500 emergency room visits in the U.S.
- Firecrackers were associated with the greatest number of injuries (1,500), followed by bottle rockets (1,200).
- Sparklers accounted for about 1/3 of the injuries to children under the age of 5 years.

³ The Medical College of Wisconsin, "Healthlink: Eye Injuries from Fireworks Too Common in Summer." <http://healthlink.mcw.edu/article/1024078264.html>

⁴ The Consumer Protection Safety Commission, "2001 Fireworks Annual Report." June 2002. <http://www.cpsc.gov/LIBRARY/2001fwreport.pdf>

The National Fire Protection Association⁵

Following are points presented in “*Fireworks*,” a paper prepared by the National Fire Protection Association. The attached selection from the paper provides general characteristics on fireworks injuries. It also discusses the fact that “safe and sane” fireworks cause more injuries than illegal fireworks, and especially to young children.

- Fireworks are the leading cause of fires on the 4th of July, and account for more outdoor fires in the U.S. than all other causes of outdoor fires combined.
- In 2003, fireworks caused an estimated 1,600 structure fires and 700 vehicle fires in the U.S., which resulted in 5 civilian deaths, 60 civilian injuries and \$58 million in direct property damage.
- In 2004, 85% of emergency room fireworks injuries involved fireworks that are permitted by federal regulations.
- The risk of fire death relative to exposure to fireworks shows that fireworks are the riskiest consumer product.
- Risks also exist wherever fireworks are manufactured, transported and stored.

⁵ The National Fire Protection Association, “Fireworks.” June 2006.

Characteristics of Fireworks Injuries

More than two-fifths (42%) of 2004 emergency room fireworks injuries were to the head, and more than half (53%) were to extremities.

Injuries to extremities were primarily to hand or finger (33% of total injuries). (See Figure 2.) One-fifth (21%) of injuries were to the eye, and one-fifth (21%) were to other parts of the head or face. The detailed U.S. statistics are based on injuries reported to hospital emergency rooms for CPSC's NEISS system during the month around July 4. A 1998 study of all Canadian fireworks injuries ever reported to the Canadian Hospitals Injury Reporting and Prevention Program found a large share of injuries occurred while the victim was holding the fireworks device, and the U.S. injury patterns are at least consistent with that pattern. (See Health Canada, "Injuries associated with ... fireworks," at <http://www.hc-sc.gc.ca>.)

More than three-fifths (62%) of 2004 fireworks injuries were burns.

Contusions and lacerations were second (20%). (See Figure 3.) Contusions and lacerations were roughly equal in number to burns when the injury was to any part of the head or face, including the eye.

Highest risks of fireworks injury are to school-age children.

As in most years, the majority of victims of fireworks injuries in 2004 were under age 20. (See Figure 4.) The highest injury rates were for children aged 5 to 9, only slightly higher than the rates for children aged 10 to 14 and individuals aged 15 to 19. The rates for children aged 0 to 4 and for young adults aged 20 to 24 were 50% higher than the average rate for all ages. (See Figure 5.) Males accounted for three-fourths (75%) of fireworks injuries.

Similar patterns in fireworks injuries were found in the Health Canada study cited above. The highest rates in that study were for the 10 to 14 and 15 to 19 age groups, followed closely by the 5 to 9 age groups. A Greek study (K. Vassilia, P. Eleni, and T. Dimitrios, "Fireworks-related childhood injuries in Greece: A national problem," *Burns*, Vol. 30, No. 2, 2004, pp. 151-153) found that young female victims were usually bystanders, while young male victims were usually involved in igniting fireworks.

In 2004, five out of six (85%) emergency room fireworks injuries involved fireworks that Federal regulations permit consumers to use.

The other 15% were large/illegal firecrackers, homemade or altered devices, and public display fireworks. Federal law permits public use of what are now referred to as "consumer fireworks" (formerly known as "common" or Class C fireworks), which are defined as "any small fireworks device designed primarily to produce visible effects by combustion" that comply with specific construction, chemical composition, and labeling regulations. These include a 50-mg maximum limit of explosive composition for ground devices and a 130-mg maximum limit of explosive composition for aerial devices. (See Figure 6.)

Some states further restrict the public's access to fireworks. The following five states have banned access by the public to all fireworks – Delaware, Massachusetts, New

Jersey, New York, and Rhode Island. Six states allow only sparklers and/or novelties, but these devices accounted for more than one-third of 2004 fireworks injuries.

“Safe and sane” fireworks caused more injuries than illegal fireworks, especially to preschool children.

The term “safe and sane” fireworks is used to refer to devices such as sparklers, fountains, snakes, party poppers, and ground spinners. Six states permit sale of sparklers and some other devices of comparable strength – Arizona, Illinois, Iowa, Maine, Ohio, and Vermont. As a promotional technique, the fireworks allowed under rules of this type have been labeled “safe and sane” fireworks by their advocates. Laws based on this approach allow considerable private use of fireworks, but exclude any explosive type devices that lift off the ground that are allowed under Federal law.

In 2004, sparklers, fountains, and novelties alone accounted for two-fifths (40%) of emergency-room fireworks injuries, including most injuries to pre-school children (ages 4 and under) where the type of fireworks device was specified. Here is a sample of NEISS incident narratives of pre-school child injuries from sparklers in 2004:

A 3-year-old boy was running with a burning sparkler, which somehow fell under the back of his shirt and burned his lower back.

A 3-year-old boy burned his fingers on a lighted sparkler.

A 3-year-old boy stepped on a hot sparkler and suffered a second degree burn to his right foot.

A 3-year-old girl playing with sparklers sustained a second degree burn when a burning sprinkler contacted the left side of her head.

A 3-year-old girl sustained a second degree burn when a burning sprinkler was dropped onto a toe on her right foot.

A 2-year-old girl sustained a second degree sparkler burn to her left shoulder and neck.

A 4-year-old boy stepped on a burning sparkler, sustaining a second-degree burn to his foot, which later developed a secondary infection.

And sparklers can also start very large fires, e.g.:

A fire started in the bedroom of a first-floor apartment when a lit sparkler ignited a combustible bed skirt. The apartment’s resident had placed the sparkler in a cupcake for her 10-year-old daughter’s birthday. After sparks ignited the bed skirt, flames spread to bedding and other combustibles. The occupants detected the fire before smoke alarms could operate and escaped.

Flames heavily damaged the bedroom of origin and other rooms in the apartment, while the structural steel elements sustained significant heat damage. Smoke extensively damaged the first floor and spread to the upper floors through a construction deficiency around a vertical ventilation shaft. Water damaged the lower floors. Damages were estimated at \$1.6 million.*

“Safe and sane” fireworks are neither. When things go wrong with fireworks, they typically go very wrong very fast, far faster than any fire protection provisions can reliably respond. And fireworks are a classic attractive nuisance for children. If children are present to watch, they will be tempted to touch. Children can move too fast and be badly hurt too quickly if they are close to fireworks, as they inevitably are at home fireworks displays.

State laws to restrict fireworks use by the public are very difficult to enforce. The other 39 states and the District of Columbia impose no restrictions beyond the Federal requirements. This patchwork approach meant that people determined to acquire fireworks though living in a state that prohibits them can often cross a state border to buy fireworks, thereby violating a state law that is difficult to enforce. Every year, for example, people from Massachusetts drive into neighboring New Hampshire – a trip of at most a couple of hours – and buy fireworks from rows of retail stands set up near the border for the convenience of the scofflaw trade.

It is possible that limited laws, such as the current Federal law, are actually more difficult to enforce than a broader law would be, because the existence of some legal fireworks for the public encourages a climate of acceptance and creates a distribution network, both of which make it easier for amateurs to obtain illegal fireworks.

Since at least 1910, NFPA has crusaded to stop the dangerous private use of fireworks, which as noted accounts for nearly all of the injuries from fireworks in most years. Many states still permit untrained citizens to purchase and use fireworks – objects designed to explode, throw off showers of hot sparks, or reach surface temperatures as high as 1,200°F. The thousands of serious injuries and extensive property loss nearly all arise from this misguided activity, rather than the only acceptably safe way to enjoy fireworks, which is in public fireworks displays conducted in accordance with NFPA 1123, *Code for Fireworks Display*. Anything else is a violation of IFMA's (International Fire Marshals Association's) *Model Fireworks Law*, which reflects NFPA's zero-tolerance policy for consumer use of fireworks.

*Adapted from Kenneth J. Tremblay, “Firewatch,” *NFPA Journal*, March/April 1997, p. 21.