

1-1 By: Gallegos, et al. S.B. No. 693
1-2 (In the Senate - Filed February 26, 2003; March 3, 2003,
1-3 read first time and referred to Committee on State Affairs;
1-4 March 19, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 19, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 693 By: Ellis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the use of flame effects and pyrotechnics before an
1-11 assembly; providing a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter F, Chapter 2154, Occupations Code, is
1-14 amended by adding Section 2154.253 to read as follows:

1-15 Sec. 2154.253. USE OF FLAME EFFECTS OR PYROTECHNICS.

1-16 (a) Definitions. In this section:

1-17 (1) "Authority having jurisdiction" means the fire
1-18 marshal of a political subdivision. If the political subdivision
1-19 has no fire marshal, the chief executive of the local fire
1-20 protection district or emergency services district shall be the
1-21 authority having jurisdiction. The county sheriff shall be the
1-22 authority having jurisdiction if the political subdivision has no
1-23 fire marshal, local fire protection district, or emergency services
1-24 district.

1-25 (2) "Flame effects" means a stationary or hand-held
1-26 device of solid, liquid, or gas, designed specifically to produce
1-27 an open flame when ignited to display a thermal, physical, visual,
1-28 or audible phenomenon as defined in NFPA Standard 160. Such devices
1-29 include paraffin wax candles, LPG candles, torches, and LPG
1-30 burners.

1-31 (3) "NFPA Standard 1126" means the edition of the
1-32 National Fire Protection Association, Standard 1126, "Standard for
1-33 the Use of Pyrotechnics before a Proximate Audience," as adopted
1-34 and amended by the commissioner.

1-35 (4) "NFPA Standard 160" means the edition of the
1-36 National Fire Protection Association, Standard 160, "Standard for
1-37 Flame Effects Before an Audience," as adopted and amended by the
1-38 commissioner.

1-39 (5) "Pyrotechnics" means an explosive composition or
1-40 device designed for entertainment to produce a visible or audible
1-41 effect by combustion, explosion, deflagration, or detonation as
1-42 defined by NFPA Standard 1126.

1-43 (b) The use of flame effects or pyrotechnics for
1-44 entertainment, exhibition, demonstration, or simulation before an
1-45 assembly of 50 people or more, except for public safety
1-46 demonstrations, must comply with NFPA Standard 160 and NFPA
1-47 Standard 1126 and the following standards and requirements:

1-48 (1) if flame effects or pyrotechnics are used inside a
1-49 building, the building must contain a complete operational
1-50 fire-sprinkler system or provide personnel to implement a standby
1-51 fire watch acceptable to the authority having jurisdiction;

1-52 (2) before flame effects or pyrotechnics are used
1-53 inside a building, an announcement to the assembly must be made
1-54 giving verbal instruction regarding the location and use of
1-55 available exits and information about the building fire protection
1-56 and fire alarm systems; a determination by the authority having
1-57 jurisdiction that an exit door is locked or obstructed constitutes
1-58 a violation of this section;

1-59 (3) the plan required by NFPA Standard 1126 or NFPA
1-60 Standard 160 detailing the criteria for use and display of
1-61 pyrotechnics and flame effects must be provided to the local
1-62 authority having jurisdiction;

1-63 (4) at least one Texas pyrotechnic special effects

operator's licensee must be present on-site at all times where pyrotechnics are used, discharged, or ignited;

(5) at least one Texas flame effects operator's licensee must be present on-site at all times where flame effects are used, discharged, or ignited;

(6) the on-site licensee shall be responsible for complying with this section;

(7) the licensee or the licensee's employer must obtain a permit from the local authority having jurisdiction before the use, discharge, or ignition of a flame effect or pyrotechnics; and

(8) the applicant for the permit must provide with the application the evidence of insurance required by Section 2154.207.

(c) The requirements provided by Subsection (b) do not apply to traditional, nontheatrical public displays such as:

(1) use of lighted candles in restaurants or during religious services;

(2) fireplaces in areas open to the public;

(3) restaurant cooking visible to the public; or

(4) the outdoor use of consumer fireworks by the general public.

(d) The authority having jurisdiction may adopt regulations governing the issuance of permits for the use of flame effects or pyrotechnics and may charge a fee to recover its administrative costs.

(e) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor. Each day a violation occurs or continues constitutes a separate offense. Venue under this section is in the county in which the offense is committed or in Travis County.

(f) A municipal or county ordinance, order, or rule in effect on September 1, 2003, is not invalidated by this chapter.

(g) This section does not limit or restrict the authority of a county, where specifically authorized by law, or municipality to enact an ordinance or order prohibiting or further regulating flame effects or pyrotechnics.

SECTION 2. Subchapter D, Chapter 2154, Occupations Code, is amended by adding Section 2154.156 to read as follows:

Sec. 2154.156. FLAME EFFECTS OPERATOR'S LICENSE. (a) A person must be a licensed flame effects operator if the person assembles, conducts, or supervises flame effects under Section 2154.253.

(b) The commissioner shall set and collect an annual flame effects operator's license fee in an amount not to exceed \$100.

(c) To qualify for a flame effects operator's license, a person must take and pass an examination and comply with any other requirements set by the commissioner through the state fire marshal's office.

(d) A person shall be charged a nonrefundable initial examination fee in an amount not to exceed \$30. A person shall be charged a nonrefundable fee in an amount not to exceed \$20 for each reexamination.

SECTION 3. Subchapter E, Chapter 2154, Occupations Code, is amended by adding Section 2154.207 to read as follows:

Sec. 2154.207. INSURANCE REQUIREMENT. (a) In addition to any other requirements, an applicant for a permit under Section 2154.253 must submit to the authority having jurisdiction evidence of worker's compensation insurance and a general liability insurance policy in an amount of not less than \$1 million unless the commissioner decreases the amount under Section 2154.051. The permit may not be issued without evidence of insurance as required by this section.

(b) The general liability insurance policy required by this section shall be conditioned to pay the amount of money the insured becomes obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the insured's servant, officer, agent, or employee in the conduct of a display of pyrotechnics and flame effects.

(c) Evidence of the general liability insurance policy

3-1 required by this section must be in the form of a certificate of
3-2 insurance issued by an insurer authorized to do business in this
3-3 state and countersigned by an insurance agent licensed in this
3-4 state.

3-5 (d) A certificate of insurance for surplus lines coverage
3-6 obtained under Article 1.14-2, Insurance Code, through a licensed
3-7 Texas surplus lines agent resident in this state may be filed with
3-8 the commissioner as evidence of coverage required by this section.

3-9 (e) An insurer may not cancel a certificate of insurance
3-10 issued under this section unless the insurer gives the authority
3-11 having jurisdiction notice of intent to cancel.

3-12 (f) This section may be satisfied by a city, county, or
3-13 other political subdivision presenting proof of its participation
3-14 in a self-insurance fund or other fund created under Chapter 791,
3-15 Government Code, covering the liability requirements under this
3-16 chapter.

3-17 SECTION 4. This Act takes effect September 1, 2003.

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