

BILL ANALYSIS

C.S.H.B. 539
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County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In recent years, confusion has arisen in regards to a county's statutory authority to restrict the sale and use of fireworks, as well as other issues relating to fireworks and firework displays.

C.S.H.B. 539 seeks to address some concerns of counties and the firework industry by better defining the conditions for which a fireworks ban can be adopted. The bill also seeks to address other important issues in regards to fireworks, such as how old an individual has to be to buy and sell fireworks and what particular fireworks are considered permissible and available to sale.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 539 states that in addition to the items described by Subsection 2154.003(b), Occupations Code, the following are not permissible fireworks: "pop rockets" with a propellant casting length of less than five inches, an exterior diameter of less than three-fourths of an inch, and an overall total rocket length of less than 26 inches; and "wire sparklers" that have a combustible pyrotechnic compound fused to a wire.

The bill further states that the advisory council described in Section 2154.054 shall consist of four members who are representatives from the fireworks industry and one member who is a representative of a county fire marshal's office and who has at least five years of experience as a county fire marshal. On request from the county commissioner, the Texas Pyrotechnic Association or the Texas Fireworks Association may recommend individuals for appointment to the council for appointments under Subsection 2154.054(b)(1) and the Texas fire Marshal's Association may recommend individuals for appointment to the council under Subsection 2154.054(b)(2).

Also, the bill states that fireworks may not be sold or offered for sale to children less than 16 years of age.

Further, the bill states that except as provided by Subsection 2154.254(c), a person may not employ or allow a person younger than 16 years of age to manufacture, distribute, sell, or purchase fireworks in the course of the person's business. Except as provided by Subsection 2154.254(c), a person may not employ a person 16 years of age or older but younger than 18 years of age to sell fireworks at a retail sales location unless the person selling fireworks at that location is accompanied by another person who is at least 18 years of age. An owner of a retail sales location may employ a person who is otherwise prohibited from engaging in that activity by Subsection 2154.254(a) or Subsection 2154.254(b) to sell fireworks at the owner's retail sales location if the person employed is a member of the owner's immediate family, 12 years of age or older, and accompanied by another person who is at least 18 years of age while the person is engaged in selling fireworks at that location.

The bill adds Subsection 2154.251(a) (8) and Subsection 2154.254(a) and (b) to the list of violations classified as a Class C misdemeanor.

The bill redefines drought conditions as the existence immediately preceding or during the fireworks season of a Keetch-Byram Drought Index (KBDI) of 575 or greater.

The bill also requires the Texas Forest Service to determine whether drought conditions, as defined under Subsection 352.051(a)(2), Local Government Code, exist on average in any county requesting such a determination. The Texas Forest Service shall make its services available each day during the Fourth of July and December fireworks seasons to respond to the request of any county for a determination whether drought conditions exist throughout a majority of the county.

Upon a determination under Section 352.051 that drought conditions exist on average in a specified county, the commissioners court of the county by order may prohibit or restrict the sale or use of restricted fireworks in the unincorporated area of the county.

Finally, the bill adds language that when a county issues an order restricting or prohibiting the sale or use of restricted fireworks under Section 352.051, the county may designate in or more areas of appropriate size and accessibility in the county as safe areas where the use of restricted fireworks is not prohibited, and the legislature encourages a county to designate such an area for that purpose.

A civil action against a county based on the county's actions under Section 352.051 must be brought in the appropriate court in that county.

The changes in law made by this Act apply only to an offense committed on or after the effective date of the applicable section. For purposes of this section, an offense is committed before the effective date of a section of this Act if any element of the offense occurs before that date. An offense committed before the effective date of a section of this Act is covered by the applicable law in effect when the offense was committed, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

Except for Section 1 of this bill, upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007. Section 1 of this bill takes effect January 2, 2008.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Section 1 of the substitute classifies pop rockets with a propellant casing length of less than five inches, an exterior diameter of less than three-fourths of an inch, and an overall total rocket length of less than 26 inches and wire sparklers that have a combustible pyrotechnic compound fused to a wire as not permissible fireworks. The original bill moved all fireworks classified under 49 C.F.R. § 173.100(r)(2) (10-1-86 edition), as "skyrockets with sticks" and "missiles with fins" into the category of not permissible fireworks.

Section 2 of the original bill is removed and not part of the substitute.

Section 3 of the original bill is Section 2 of the substitute. In Section 2 of C.S.H.B 539, the bill adds that the member of the advisory council that is a representative of the county fire marshals is recommended to the Commissioner of Insurance by the Texas Fire Marshal's Association. The substitute also adds that the Texas Fireworks Association can recommend individuals to serve on the advisory council. Previously, only the Texas Pyrotechnics Association could suggest membership of the council.

Section 4 of the original bill was removed and not included in the substitute.

Section 5 of the original bill is Section 3 of the substitute.

Section 6 of the original bill is Section 4 of the substitute. In Sections 4 of the Substitute, the bill allows for a member of a firework stand owner's immediate family to sell fireworks at the owner's retail sales location if they are older than 12 years of age and if they are accompanied by another person who is at least 18 years of age.

Section 7 of the original bill is Section 5 of the substitute. Sections 5 of the Substitute differs from the original by lessening the penalty for not complying with the Subsection 2154.251 a(8), Occupations Code.

Section 6 of the substitute redefines at what point a commissioners court can impose an order banning fireworks under Subsection 352.051, Local Government Code. Currently, the Texas Fire Service recommends that a ban be put into effect if the county has a KBDI of 575. This section puts the number into statute. The section also clarifies that the KBDI must be the average for the county and makes conforming changes in the code to reflect this clarification.

Because a fireworks ban under Subsection 352.051, Local Government Code, is only effective if the county is above a KBDI rating of 575, the substitute stipulates that an employee of the Texas Fire Service is available to make such determinations.

The substitute encourages that county designates a safe zone.

Section 6 of the substitute stipulates a civil action against a county based on actions under this sections must be brought in the appropriate court in that county.

Section 8 of the original bill is section 7 of the substitute.

Section 9 of the original bill is Section 8 of the substitute.