

By: Smith of Harris, Crabb, Callegari

H.B. No. 539

Substitute the following for H.B. No. 539:

By: Harless

C.S.H.B. No. 539

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of fireworks and fireworks displays.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2154.003, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to the items described by Subsection (b), the following are not permissible fireworks:

(1) 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

(2) wire sparklers that have a combustible pyrotechnic compound fused to a wire.

SECTION 2. Sections 2154.054(b) and (c), Occupations Code, are amended to read as follows:

(b) The council is composed of five members as follows:

(1) four members who are representatives from the fireworks industry; and

(2) 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.

(c) On [~~The Texas Pyrotechnic Association may, on~~] request by the commissioner, the following may recommend individuals for appointment to the council:

1 (1) the Texas Pyrotechnic Association or the Texas
2 Fireworks Association for appointments under Subsection (b)(1);
3 and

4 (2) the Texas Fire Marshal's Association for an
5 appointment under Subsection (b)(2).

6 SECTION 3. Section 2154.252(c), Occupations Code, is
7 amended to read as follows:

8 (c) Fireworks may not be sold or offered for sale to
9 children under 16 [~~12~~] years of age or to an intoxicated or
10 incompetent person. A person selling fireworks at retail shall
11 make a reasonable effort to determine that potential purchasers of
12 fireworks are of the minimum age required by this subsection.

13 SECTION 4. Subchapter F, Chapter 2154, Occupations Code, is
14 amended by adding Section 2154.254 to read as follows:

15 Sec. 2154.254. EMPLOYMENT OF MINORS. (a) Except as
16 provided by Subsection (c), a person may not employ or allow a
17 person younger than 16 years of age to manufacture, distribute,
18 sell, or purchase fireworks in the course of the person's business.

19 (b) Except as provided by Subsection (c), a person may not
20 employ a person 16 years of age or older but younger than 18 years of
21 age to sell fireworks at a retail sales location unless the person
22 selling fireworks at that location is accompanied by another person
23 who is at least 18 years of age.

24 (c) An owner of a retail sales location may employ a person
25 who is otherwise prohibited from engaging in that activity by
26 Subsection (a) or (b) to sell fireworks at the owner's retail sales
27 location if the person employed is:

- 1 (1) a member of the owner's immediate family;
2 (2) 12 years of age or older; and
3 (3) accompanied by another person who is at least 18
4 years of age while the person is engaged in selling fireworks at
5 that location.

6 SECTION 5. Section 2154.303(c), Occupations Code, is
7 amended to read as follows:

8 (c) A violation of Section 2154.251(a)(1), (2), (3), (4),
9 ~~[or]~~ (5), or (8) that results in property damage in an amount of
10 less than \$200 and does not result in bodily injury or death, or a
11 violation of Section 2154.254(a) or (b), is a Class C misdemeanor.

12 SECTION 6. Section 352.051, Local Government Code, is
13 amended by amending Subsections (a), (b), (c), and (f) and adding
14 Subsection (j) to read as follows:

15 (a) For the purposes of this section the following
16 definitions shall apply:

17 (1) "Restricted fireworks" means only those items
18 classified under 49 C.F.R. Sec. 173.100(r)(2) (10-1-86 edition), as
19 "skyrockets with sticks" and "missiles with fins".

20 (2) "Drought conditions" means ~~[shall mean]~~ the
21 existence immediately preceding or during the fireworks season of a
22 ~~[long-term deficit of moisture creating atypically severe~~
23 ~~conditions with increased wildfire occurrence as defined by the~~
24 ~~Texas Forest Service through the use of the]~~ Keetch-Byram Drought
25 Index of 575 or greater ~~[, or when such index is not available,~~
26 ~~through a comparable measurement which takes into consideration the~~
27 ~~burning index, spread component, or ignition component for that~~

1 ~~particular area]~~.

2 (b)(1) The Texas Forest Service in the ordinary course of
3 its activities shall determine whether drought conditions, as
4 defined under Subsection (a)(2), exist on average in [~~all or part~~
5 ~~of]~~ any county requesting such a determination. The Texas Forest
6 Service shall make available the measurement index guidelines used
7 to [~~that~~] determine whether drought conditions exist in a
8 particular area [~~is in drought condition]~~. Following any
9 determination that such drought conditions exist, the Texas Forest
10 Service shall notify said county or counties when such drought
11 conditions no longer exist. The Texas Forest Service shall make its
12 services available each day during the Fourth of July and December
13 fireworks seasons to respond to the request of any county for a
14 determination whether drought conditions exist on average in the
15 county.

16 (2) The Texas Forest Service shall be allowed to take
17 such donations of equipment or funds as necessary to aid in the
18 carrying out of this section.

19 (c) Upon a determination under this section that drought
20 conditions exist on average in [~~within all or part of]~~ a specified
21 county, the commissioners court of the [~~such~~] county by order may
22 prohibit or restrict the sale or use of restricted fireworks in [~~all~~
23 ~~or a portion of]~~ the unincorporated area of the county [~~where~~
24 ~~drought conditions have been determined to exist]~~. In addition,
25 during the December fireworks season, the commissioners court of a
26 county by order may restrict or prohibit the sale or use of
27 restricted fireworks in specified areas when conditions on rural

1 acreage in the county not under cultivation for a period of at least
2 12 months are determined to be extremely hazardous for the danger of
3 fire because of high grass or dry vegetation.

4 (f) When a county issues an order restricting or prohibiting
5 the sale or use of restricted fireworks under this section, the
6 [The] county may designate one or more areas of appropriate size and
7 accessibility in the county as safe areas where the use of
8 restricted fireworks is not prohibited, and the legislature
9 encourages a county to designate such an area for that purpose. The
10 safe area may be provided by the county, a municipality within the
11 county, or an individual, business, or corporation. A safe area may
12 be designated in and provided in the geographic area of the
13 regulatory jurisdiction of a municipality if the activity conducted
14 in the safe area is authorized by general law or a municipal
15 regulation or ordinance. An area is considered safe if adequate
16 public safety and fire protection services are provided to the
17 area. A county, municipality, individual, business, or corporation
18 is not liable for injuries or damages resulting from the
19 designation, maintenance, or use of the safe area.

20 (j) A civil action against a county based on the county's
21 actions under this section must be brought in the appropriate court
22 in that county.

23 SECTION 7. (a) The changes in law made by this Act apply
24 only to an offense committed on or after the effective date of the
25 applicable section. For purposes of this section, an offense is
26 committed before the effective date of a section of this Act if any
27 element of the offense occurs before that date.

1 (b) An offense committed before the effective date of a
2 section of this Act is covered by the applicable law in effect when
3 the offense was committed, and the former law is continued in effect
4 for that purpose.

5 SECTION 8. (a) Except as provided by Subsection (b) of this
6 section, this Act takes effect immediately if it receives a vote of
7 two-thirds of all the members elected to each house, as provided by
8 Section 39, Article III, Texas Constitution. If this Act does not
9 receive the vote necessary for immediate effect, this Act takes
10 effect September 1, 2007.

11 (b) Section 1 of this Act takes effect January 2, 2008.