

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Smith of Harris, Crabb, Callegari

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 2154.202(g), Occupations Code, is  
7 amended to read as follows:

8           (g) A retail fireworks permit holder may sell fireworks only  
9 to the public, and only during periods:

10           (1) beginning June 24 and ending at midnight on July 4;  
11 [~~and~~]

12           (2) beginning December 20 and ending at midnight on  
13 January 1 of the following year; and

14           (3) beginning May 1 and ending at midnight on May 5 if  
15 the fireworks are sold at a location that is not more than 100 miles  
16 from the Texas-Mexico border.

17           SECTION 4. Section 2154.252(c), Occupations Code, is  
18 amended to read as follows:

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

24           SECTION 5. Subchapter F, Chapter 2154, Occupations Code, is  
25 amended by adding Section 2154.254 to read as follows:

26           Sec. 2154.254. EMPLOYMENT OF MINORS. (a) Except as  
27 provided by Subsection (c), a person may not employ or allow a

1 person younger than 16 years of age to manufacture, distribute,  
2 sell, or purchase fireworks in the course of the person's business.

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

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

- 12 (1) a member of the owner's immediate family;  
13 (2) 12 years of age or older; and  
14 (3) accompanied by another person who is at least 18  
15 years of age while the person is engaged in selling fireworks at  
16 that location.

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

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

23 SECTION 7. Section 352.051, Local Government Code, is  
24 amended by amending Subsections (a), (b), (c), (d), and (f) and  
25 adding Subsection (j) to read as follows:

26 (a) For the purposes of this section the following  
27 definitions shall apply:

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

4           (2) "Drought conditions" means ~~[shall mean]~~ the  
5 existence immediately preceding or during the fireworks season of a  
6 ~~[long-term deficit of moisture creating atypically severe~~  
7 ~~conditions with increased wildfire occurrence as defined by the~~  
8 ~~Texas Forest Service through the use of the]~~ Keetch-Byram Drought  
9 Index of 575 or greater~~[, or when such index is not available,~~  
10 ~~through a comparable measurement which takes into consideration the~~  
11 ~~burning index, spread component, or ignition component for that~~  
12 ~~particular area]~~.

13           (b)(1) The Texas Forest Service in the ordinary course of  
14 its activities shall determine whether drought conditions, as  
15 defined under Subsection (a)(2), exist on average in ~~[all or part~~  
16 ~~of]~~ any county requesting such a determination. The Texas Forest  
17 Service shall make available the measurement index guidelines used  
18 to ~~[that]~~ determine whether drought conditions exist in a  
19 particular area ~~[is in drought condition]~~. Following any  
20 determination that such drought conditions exist, the Texas Forest  
21 Service shall notify said county or counties when such drought  
22 conditions no longer exist. The Texas Forest Service shall make its  
23 services available each day during the Fourth of July and December  
24 fireworks seasons to respond to the request of any county for a  
25 determination whether drought conditions exist on average in the  
26 county.

27           (2) The Texas Forest Service shall be allowed to take

1 such donations of equipment or funds as necessary to aid in the  
2 carrying out of this section.

3 (c) Upon a determination under this section that drought  
4 conditions exist on average in [~~within all or part of~~] a specified  
5 county, the commissioners court of the [~~such~~] county by order may  
6 prohibit or restrict the sale or use of restricted fireworks in [~~all~~  
7 ~~or a portion of~~] the unincorporated area of the county [~~where~~  
8 ~~drought conditions have been determined to exist~~]. In addition,  
9 during the December fireworks season, the commissioners court of a  
10 county by order may restrict or prohibit the sale or use of  
11 restricted fireworks in specified areas when conditions on rural  
12 acreage in the county not under cultivation for a period of at least  
13 12 months are determined to be extremely hazardous for the danger of  
14 fire because of high grass or dry vegetation.

15 (d) To facilitate compliance with an order adopted under  
16 Subsection (c), the order must be adopted before:

17 (1) April 25 of each year for the Cinco de Mayo  
18 fireworks season;

19 (2) June 15 of each year for the Fourth of July  
20 fireworks season; and

21 (3) [~~(2)~~] December 15 of each year for each December  
22 fireworks season.

23 (f) When a county issues an order restricting or prohibiting  
24 the sale or use of restricted fireworks under this section, the  
25 [~~The~~] county may designate one or more areas of appropriate size and  
26 accessibility in the county as safe areas where the use of  
27 restricted fireworks is not prohibited, and the legislature

1 encourages a county to designate such an area for that purpose. The  
2 safe area may be provided by the county, a municipality within the  
3 county, or an individual, business, or corporation. A safe area may  
4 be designated in and provided in the geographic area of the  
5 regulatory jurisdiction of a municipality if the activity conducted  
6 in the safe area is authorized by general law or a municipal  
7 regulation or ordinance. An area is considered safe if adequate  
8 public safety and fire protection services are provided to the  
9 area. A county, municipality, individual, business, or corporation  
10 is not liable for injuries or damages resulting from the  
11 designation, maintenance, or use of the safe area.

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

15 SECTION 8. (a) The changes in law made by this Act apply  
16 only to an offense committed on or after the effective date of the  
17 applicable section. For purposes of this section, an offense is  
18 committed before the effective date of a section of this Act if any  
19 element of the offense occurs before that date.

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

24 SECTION 9. (a) Except as provided by Subsection (b) of this  
25 section, this Act takes effect immediately if it receives a vote of  
26 two-thirds of all the members elected to each house, as provided by  
27 Section 39, Article III, Texas Constitution. If this Act does not

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1 receive the vote necessary for immediate effect, this Act takes  
2 effect September 1, 2007.

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

FLOOR AMENDMENT NO. 2

BY: WEST

1 Amend H. B. 539 (Senate Committee Printing), on page 1,  
2 lines 14-21, by striking proposed subsection (d) and  
3 substituting new subsection (d), to read as follows:

4  
5 "(d) In addition to the items described by Subsection  
6 (b), pop rockets with a propellant casing length of less than  
7 five inches, an exterior diameter of less than three-fourths of  
8 an inch, and an overall total rocket length of less than 26  
9 inches, are not permissible fireworks."

**ADOPTED**

MAY 23 2006

*Patricia A. ...*  
Secretary of the Senate



# ADOPTED

MAY 23 2007

*Latey Spaw*  
Secretary of the Senate

FLOOR AMENDMENT NO. 4

BY: *Westman*

1 Amend H.B. No. 539 (senate committee report), in SECTION 3 of  
2 the bill, in added Subdivision (3), Subsection (g), Section  
3 2154.202, Occupations Code (page 1, lines 46 through 48), by  
4 striking "if the fireworks are sold at a location that is not more  
5 than 100 miles from the Texas-Mexico border".



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 17, 2007**

**TO:** Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB539** by Smith, Wayne (Relating to the regulation of fireworks and fireworks displays.),  
**As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Occupations Code to add to statute which items are not permissible fireworks. The bill would also expand the membership of the advisory council appointed to assist the Texas Commissioner of Insurance in enforcing the provisions of Chapter 2154, to include a member of a county fire marshal's office.

The minimum age of a person to whom fireworks may be sold would be increased from 12 to 16. A person younger than 16 years of age would not be allowed to be employed to manufacture, distribute, sell, or purchase fireworks unless the person is a member of the owner's immediate family, is at least 12 years of age, and is accompanied by another person who is at least 18 years of age. A violation would be a Class C misdemeanor, which is punishable by a fine not to exceed \$500. The improper selling, storing, or displaying of fireworks would also be a Class C misdemeanor.

The bill would amend the Local Government Code to require the Texas Forest Service to make its services available each day during the Fourth of July and December fireworks seasons to respond to requests from counties for a determination whether drought conditions exist on average in the county.

The addition of items that are not permissible fireworks would take effect January 2, 2008. Otherwise, the bill would take effect immediately if it were to receive the required two-thirds vote in each house; otherwise, it would take effect September 1, 2007.

It is assumed that the Texas Forest Service could provide the required services using existing resources.

**Local Government Impact**

Expansion of which fireworks are not permissible by statute and changes in age of persons who may purchase, buy, manufacture, or sell fireworks could result in an increase in costs associated with enforcement, although it is assumed that those costs would be offset somewhat by fines imposed.

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 576 Texas Forest Service

**LBB Staff:** JOB, DB



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 25, 2007**

**TO:** Honorable Wayne Smith, Chair, House Committee on County Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB539** by Smith, Wayne (Relating to the regulation of fireworks and fireworks displays.),  
**Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Occupations Code to add to statute which items are not permissible fireworks. The bill would also expand the membership of the advisory council appointed to assist the Texas Commissioner of Insurance in enforcing the provisions of Chapter 2154, to include a member of a county fire marshal's office.

The minimum age of a person to whom fireworks may be sold would be increased from 12 to 16. A person younger than 16 years of age would not be allowed to be employed to manufacture, distribute, sell, or purchase fireworks unless the person is a member of the owner's immediate family, is at least 12 years of age, and is accompanied by another person who is at least 18 years of age. A violation would be a Class C misdemeanor, which is punishable by a fine not to exceed \$500. The improper selling, storing, or displaying of fireworks would also be a Class C misdemeanor.

The bill would amend the Local Government Code to require the Texas Forest Service to make its services available each day during the Fourth of July and December fireworks seasons to respond to requests from counties for a determination whether drought conditions exist on average in the county.

The addition of items that are not permissible fireworks would take effect January 2, 2008. Otherwise, the bill would take effect immediately if it were to receive the required two-thirds vote in each house; otherwise, it would take effect September 1, 2007.

It is assumed that the Texas Forest Service could provide the required services using existing resources.

**Local Government Impact**

Expansion of which fireworks are not permissible by statute and changes in age of persons who may purchase, buy, manufacture, or sell fireworks could result in an increase in costs associated with enforcement, although it is assumed that those costs would be offset somewhat by fines imposed.

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 576 Texas Forest Service

**LBB Staff:** JOB, DB



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 9, 2007**

**TO:** Honorable Wayne Smith, Chair, House Committee on County Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB539** by Smith, Wayne (Relating to the regulation of fireworks and fireworks displays.),  
**As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Occupations Code regarding regulation of fireworks by municipalities and counties and to add to statutory restrictions on the use of fireworks. Among the proposed changes, if a municipality or a county were to enact an ordinance, order, or rule prohibiting or further regulating fireworks that would result in discontinuance of otherwise permitted or licensed manufacture, sale, storage, possession, or transport of fireworks, the municipality or county would be required to provide just and adequate compensation to the person(s) to whom damages would be caused by the discontinuation.

The bill would also expand the membership of the advisory council appointed to assist the Texas Commissioner of Insurance in enforcing the provisions of Chapter 2154, to include a member of a county fire marshal's office. The commissioner would be required to report to the legislature the advisory council's recommendations for rule changes related to regulating fireworks. The advisory council and the state fire marshal would be required to promote cooperation between the fireworks industry and local governments in establishing a fireworks public awareness and safety campaign.

The minimum age of a person to whom fireworks may be sold would be increased from 12 to 16. A person younger than 16 years of age would not be allowed to be employed to manufacture, distribute, sell, or purchase fireworks. A person older than 16 and younger than 18 would not be allowed to sell fireworks at a retail sales location unless accompanied by a person who is 18 or older. A violation would be a Class C misdemeanor, which is punishable by a fine not to exceed \$500.

The Department of Insurance indicates that implementing provisions of the bill could be accomplished using existing resources.

**Local Government Impact**

The negative fiscal impact of having to provide compensation to a person or persons who would suffer damages as the result of discontinuance of the manufacture or sale of otherwise permitted and licensed fireworks would depend on the number of persons affected, the amount of fireworks affected, and the value considered to be just and adequate for compensation purposes.

Expansion of which fireworks would be prohibited or further restricted by statute and changes in age of persons who may purchase, buy, manufacture, or sell fireworks could result in an increase in costs associated with enforcement, although it is assumed that those costs would be offset somewhat by fines imposed.

**Source Agencies:** 454 Department of Insurance

**LBB Staff:** JOB, DB

