

House Bill 539
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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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), 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, are not permissible fireworks.

Same as House version.

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SECTION 3. Section 2154.202(g), Occupations Code, is amended to read as follows:

- (g) A retail fireworks permit holder may sell fireworks only to the public, and only during periods:
- (1) beginning June 24 and ending at midnight on July 4; ~~and~~
 - (2) beginning December 20 and ending at midnight on January 1 of the following year; and
 - (3) beginning May 1 and ending at midnight on May 5 if the fireworks are sold at a location that is not more than 100 miles from the Texas-Mexico border.

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

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

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

Sec. 2154.254. EMPLOYMENT OF MINORS. (a) Except as provided by Subsection (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

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SECTION 3. Section 2154.202(g), Occupations Code, is amended to read as follows:

- (g) A retail fireworks permit holder may sell fireworks only to the public, and only during periods:
- (1) beginning June 24 and ending at midnight on July 4; ~~and~~
 - (2) beginning December 20 and ending at midnight on January 1 of the following year; and
 - (3) beginning May 1 and ending at midnight on May 5.

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course of the person's business.

(b) Except as provided by Subsection (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.

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

(1) a member of the owner's immediate family;

(2) 12 years of age or older; and

(3) accompanied by another person who is at least 18 years of age while the person is engaged in selling fireworks at that location.

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

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

Same as House version.

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

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

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

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

(b)(1) The Texas Forest Service in the ordinary course of its activities shall determine whether drought conditions, as defined under Subsection (a)(2), exist on average in ~~[all or part of]~~ any county requesting such a determination. The Texas Forest Service shall make available the measurement index guidelines used to ~~[that]~~ determine whether drought conditions exist in a particular area ~~[is in drought condition]~~. Following any determination that such drought conditions exist, the Texas Forest Service shall notify said county or counties when such drought conditions no longer exist. 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

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for a determination whether drought conditions exist on average in the county.

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

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

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

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

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

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

(f) When a county issues an order restricting or prohibiting the sale or use of restricted fireworks under this section, the [~~The~~] county may designate one or more

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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. The safe area may be provided by the county, a municipality within the county, or an individual, business, or corporation. A safe area may be designated in and provided in the geographic area of the regulatory jurisdiction of a municipality if the activity conducted in the safe area is authorized by general law or a municipal regulation or ordinance. An area is considered safe if adequate public safety and fire protection services are provided to the area. A county, municipality, individual, business, or corporation is not liable for injuries or damages resulting from the designation, maintenance, or use of the safe area.

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

SECTION 8. (a) 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.

(b) 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

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law is continued in effect for that purpose.

SECTION 9. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.
(b) Section 1 of this Act takes effect January 2, 2008.

Same as House version.