

By: Leibowitz

H.B. No. 1752

A BILL TO BE ENTITLED

1 AN ACT
2 relating to county regulation of fireworks during severe drought
3 conditions.

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

5 SECTION 1. Section 352.051, Local Government Code, is
6 amended by amending Subsections (a), (b), (d)-(g), and (i) and
7 adding Subsections (c-1) and (i-1) to read as follows:

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

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

13 (1-a) "Prohibited fireworks" means those devices that:

14 (A) produce a shower or spray of ignited
15 materials; or

16 (B) when ignited, rise above the ground.

17 (2) "Drought conditions" means the existence
18 immediately preceding or during the fireworks season of a
19 Keetch-Byram Drought Index of 575 or greater.

20 (3) "Severe drought conditions" means the existence
21 immediately preceding or during the fireworks season of a
22 Keetch-Byram Drought Index of 600 or greater.

23 (b)(1) The Texas Forest Service in the ordinary course of
24 its activities shall determine whether drought conditions, as

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

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

17 (c-1) Upon a determination under this section that severe
18 drought conditions exist on average in a specified county, the
19 commissioners court of the county by order may prohibit or restrict
20 the sale or use of restricted and prohibited fireworks in the
21 unincorporated area of the county. In addition, during the
22 December fireworks season, the commissioners court of a county by
23 order may restrict or prohibit the sale or use of restricted and
24 prohibited fireworks in specified areas when conditions on rural
25 acreage in the county not under cultivation for a period of at least
26 12 months are determined to be extremely hazardous for the danger of
27 fire because of high grass or dry vegetation.

1 (d) To facilitate compliance with an order adopted under
2 Subsection (c) or (c-1), the order must be adopted before:

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

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

7 (3) December 15 of each year for each December
8 fireworks season.

9 (e) An order issued under this section shall expire upon
10 determination as provided under Subsection (b) that ~~such~~ drought
11 or severe drought conditions no longer exist.

12 (f) When a county issues an order restricting or prohibiting
13 the sale or use of restricted or prohibited fireworks under this
14 section, the county may approve a site provided by fireworks
15 vendors ~~[designate one or more areas]~~ of appropriate size and
16 accessibility in the county as a safe area ~~[areas]~~ where the use of
17 restricted fireworks is not prohibited, and the legislature
18 encourages a county to approve ~~[designate]~~ such an area for that
19 purpose. ~~[The safe area may be provided by the county, a~~
20 ~~municipality within the county, or an individual, business, or~~
21 ~~corporation.]~~ A safe area may be approved ~~[designated]~~ in and
22 provided in the geographic area of the regulatory jurisdiction of a
23 municipality if the activity conducted in the safe area is
24 authorized by general law or a municipal regulation or
25 ordinance. An area is considered safe if adequate public safety
26 and fire protection services are provided to the area. A county,
27 municipality, individual, business, or corporation is not liable

1 for injuries or damages resulting from the approval [~~designation~~],
2 maintenance, or use of the safe area.

3 (g) A person selling any type of fireworks, including
4 restricted or prohibited fireworks, in a county that has adopted an
5 order under Subsection (c) or (c-1) shall, at every location at
6 which the person sells fireworks in the county, provide reasonable
7 notice of the order and reasonable notice of any location approved
8 [~~designated~~] under Subsection (f) as a safe area.

9 (i) A person commits an offense if the person knowingly or
10 intentionally violates a prohibition established by an order issued
11 under Subsection (c) [~~this section~~]. An offense under this
12 subsection is a Class C misdemeanor.

13 (i-1) A person commits an offense if the person knowingly or
14 intentionally violates a prohibition established by an order issued
15 under Subsection (c-1). An offense under this subsection is a
16 misdemeanor punishable by a fine not to exceed \$1,000.

17 SECTION 2. This Act takes effect September 1, 2009.