

By: Miller of Erath

H.B. No. 3618

A BILL TO BE ENTITLED

AN ACT

Relating to the regulation of restricted fireworks.

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

SECTION 1. Amend Section 352.051(2), Local Government Code as follows:

Sec. 352.051. REGULATION OF RESTRICTED FIREWORKS. (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 the existence on the specific days listed in subsection(d) immediately preceding or on specific days during the fireworks season of a Keetch-Byram Drought Index (KBDI) of 575 or greater. The Texas Forest Service and counties may not use any forecasted indexes for the purpose of determining drought conditions under this Subchapter.

SECTION 2. Amend Section 352.051(b)(1), and (c) Local Government Code as follows:

(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 for that specific day in any county that has requested such a determination. The Texas Forest Service shall make available the measurement index guidelines used to determine whether drought conditions exist in a

1 particular area. Following any determination that such drought
2 conditions exist, the Texas Forest Service shall immediately notify
3 said county or counties and the State Fire Marshall when such
4 drought conditions no longer exist. Upon notification by the Texas
5 Forest Service and the State Fire Marshall shall instruct the
6 county or counties to discontinue the ban and notify all news
7 outlets in the county and the associations representing the
8 fireworks industry who have given him their contact information
9 that the ban has been lifted. The Texas Forest Service and State
10 Fire Marshall shall make ~~its~~ their services available each day
11 during the Fourth of July and December fireworks seasons to respond
12 to the request of any county or fireworks vendor for a determination
13 whether drought 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) Upon a determination under this section that drought
18 conditions exist on average in a specified county on that specific
19 day, the commissioner's court of the county by order may prohibit or
20 restrict only the sale or use of restricted fireworks as defined in
21 this Subchapter in the unincorporated area of the county. In
22 addition, during the December fireworks season, the commissioners
23 court of a county by order may restrict or prohibit the sale or use
24 of restricted 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), 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 conditions no longer exist.

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

26 (g) A person selling any type of fireworks, including
27 restricted fireworks, in a county that has adopted an order under

1 Subsection (c) shall, at every location at which the person sells
2 fireworks in the county, provide reasonable notice of the order and
3 reasonable notice of any location designated under Subsection (f)
4 as a safe area.

5 (h) An affected party is entitled to injunctive relief to
6 prevent the violation or threatened violation of a requirement or
7 prohibition established by an order adopted under this section.

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

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 3. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2011.