

By: Lucio III

H.B. No. 3429

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of fireworks during a drought and under a declaration of local disaster.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS

SECTION 1. Section 352.051, Local Government Code, SUBCHAPTER C. FIREWORKS, is amended as follow:

Sec. 352.051. REGULATION OF [~~RESTRICTED~~] FIREWORKS DURING DROUGHT. (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 immediately preceding or during the fireworks season of a Keetch-Byram Drought Index of 575 or greater.

(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 any county requesting such a determination. The Texas Forest Service shall make available the measurement index guidelines used to determine whether drought conditions exist in a particular area. 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

1 make its services available each day during the Fourth of July and
2 December fireworks seasons to respond to the request of any county
3 for a determination whether drought conditions exist on average in
4 the county.

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

8 (c) Upon a determination by the Texas Forest Service under
9 this section that drought conditions exist on average in a
10 specified county, the commissioners court of the county by order
11 may prohibit or restrict the sale or use of certain ~~[restricted]~~
12 fireworks in the unincorporated area of the county only in
13 accordance with the following provisions~~[-]~~:

14 (1) during a Keetch-Byram Drought Index of 575 or
15 greater a commissioners court may adopt an order prohibiting the
16 sale or use of restricted fireworks;

17 (2) during a Keetch-Byram Drought Index of 675 or
18 greater during a fireworks season, a commissioners court may adopt
19 an additional order limiting the dates of sell of permissible
20 fireworks to June 30 through July 4 for the Fourth of July fireworks
21 season or December 27 through January 1 for the December fireworks
22 season;

23 (3) during a Keetch-Byram Drought Index of 750 or
24 greater, a commissioners court may adopt an additional order
25 limiting the sale or use of fireworks to ground and handheld
26 fireworks only, as defined by NFPA and APA manuals.

27 ~~[In addition, during the December fireworks season, the~~

1 ~~commissioners court of a county by order may restrict or prohibit~~
2 ~~the sale or use of restricted fireworks in specified areas when~~
3 ~~conditions on rural acreage in the county not under cultivation for~~
4 ~~a period of at least 12 months are determined to be extremely~~
5 ~~hazardous for the danger of fire because of high grass or dry~~
6 ~~vegetation.]~~

7 ~~[(d) To facilitate compliance with an order adopted under~~
8 ~~Subsection (c), the order must be adopted before:]~~

9 ~~[(1) April 25 of each year for the Cinco de Mayo~~
10 ~~fireworks season,]~~

11 ~~[(2) June 15 of each year for the Fourth of July~~
12 ~~fireworks season, and]~~

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

15 (e) An order issued under this section shall expire upon
16 determination as provided under Subsection (b) that such drought
17 conditions no longer exist.

18 (f) When a county issues an order restricting or prohibiting
19 the sale or use of ~~restricted~~ fireworks under this section, the
20 county may designate one or more areas of appropriate size and
21 accessibility in the county as safe areas where the use of
22 ~~restricted~~ fireworks subject to a commissioners court order is
23 not prohibited, and the legislature encourages a county to
24 designate such an area for that purpose. The safe area may be
25 provided by the county, a municipality within the county, or an
26 individual, business, or corporation. A safe area may be designated
27 in and provided in the geographic area of the regulatory

1 jurisdiction of a municipality if the activity conducted in the
2 safe area is authorized by general law or a municipal regulation or
3 ordinance. An area is considered safe if adequate public safety and
4 fire protection services are provided to the area. A county,
5 municipality, individual, business, or corporation is not liable
6 for injuries or damages resulting from the designation,
7 maintenance, or use of the safe area.

8 (g) A person selling any type of fireworks, including
9 restricted fireworks, in a county that has adopted an order under
10 Subsection (c) shall, at every location at which the person sells
11 fireworks in the county, provide reasonable notice of the order and
12 reasonable notice of any location designated under Subsection (f)
13 as a safe area.

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

17 (i) A person commits an offense if the person knowingly or
18 intentionally violates a prohibition established by an order issued
19 under this section. An offense under this subsection is a Class C
20 misdemeanor.

21 (j) A civil action against a county based on the county's
22 actions under this section must be brought in the appropriate court
23 in that county~~[-]~~, unless the action includes a contested fact
24 issue regarding the existence or accuracy of a determination of
25 drought conditions by the Texas Forest Service, in which case the
26 action must be brought in Brazos County, but the Texas Forest
27 Service shall not be joined as a party.

1 SECTION 2. Section 418.108(i), Government Code, is
2 repealed.

3 SECTION 3. This act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2013.