

BILL ANALYSIS

Senate Research Center

H.B. 539
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Intergovernmental Relations
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, confusion has arisen in regard to a county's statutory authority to restrict the sale and use of fireworks, as well as other issues relating to fireworks and firework displays. Better definitions of the conditions for the adoption of a fireworks ban may address the confusion.

H.B. 539 provides the conditions for a fireworks ban and addresses other issues regarding fireworks, such as how old an individual has to be to buy and sell fireworks and what particular fireworks are considered permissible and available for sale.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2154.003, Occupations Code, by adding Subsection (d) to include certain types of pop rockets and wire sparklers in addition to the items described by Subsection (b) of this section (Permissible Fireworks) as fireworks that are not permissible.

SECTION 2. Amends Sections 2154.054(b) and (c), Occupations Code, as follows:

(b) Provides that the advisory council established by the commissioner of insurance (council) is composed of five members, four of whom are representatives of the fireworks industry and one member who is a representative of a county fire marshal's office and who has at least five years of experience as a marshal.

(c) Authorizes, on request of the commission, that the Texas Pyrotechnic Association or the Texas Fireworks Association recommend individuals for appointments to the council as representatives of the fireworks industry and the Texas Fire Marshal's Association for the appointment of a county fire marshal to the council.

SECTION 3. Amends Section 2154.202(g), Occupations Code, to include a period beginning May 1 and ending at midnight on May 5 as a period during which a retail fireworks permit holder is authorized to sell fireworks to the public if the fireworks are sold at a location that is not more than 100 miles from the Texas-Mexico border.

SECTION 4. Amends Section 2154.252(c), Occupations Code, to prohibit the selling or offering for sale of fireworks to children under 16, rather than 12, years of age.

SECTION 5. Amends Subchapter F, Chapter 2154, Occupations Code, by adding Section 2154.254, as follows:

Sec. 2154.254. EMPLOYMENT OF MINORS. (a) Prohibits a person from employing or allowing a person younger than 16 years of age to manufacture, distribute, sell, or purchase fireworks in the course of the person's business, except as provided by Subsection (c).

(b) Prohibits a person from employing a person older than 16 years of age 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, except as provided by Subsection (c).

(c) Authorizes an owner of a retail sales location to employ a person who is otherwise prohibited from engaging the sale of fireworks by Subsection (a) or (b) at the owner's retail sales location if the person employed is a member of the owner's immediate family, 12 years of age or older, and accompanied by another person who is at least 18 years of age while the person is selling fireworks at that location.

SECTION 6. Amends Section 2154.303(c), Occupations Code, to include a violation of Section 2154.251(8) (regarding prohibition from selling, storing, manufacturing, distributing, or displaying fireworks except as provided by this chapter or rules of the commissioner) or a violation of Section 2154.254(a) or (b) among other violations that result in less than \$200 in property damage and do not result in bodily injury or death as a Class C misdemeanor.

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

(a) Redefines "drought conditions."

(b) Requires the Texas Forest Service (service) to determine whether drought conditions exist on average in any county, rather than in all or part of a county, requesting such a determination. Requires the service to make available the measurement index guidelines used to determine whether drought conditions exist in a particular area. Requires the service to make its services available each day during the Fourth of July and December fireworks seasons to respond to the request of any county for a determination on whether drought conditions exist on average in the county.

(c) Authorizes the commissioners court of a county by order to prohibit or restrict the sale or use of restricted fireworks in the unincorporated area of the county in which drought conditions are determined to exist on average. Makes conforming changes.

(d) Requires an order adopted under Subsection (c) to be adopted before April 25 of each year for the Cinco de Mayo fireworks season to facilitate compliance with such an order. Makes conforming changes.

(f) Authorizes a county that issues an order to designate one or more areas of appropriate size and accessibility in the county as safe areas where the use of restricted fireworks is not prohibited, and provides that the legislature encourages a county to designate such an area for that purpose.

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

SECTION 8. Makes application of this Act prospective. Provides that, for purpose 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.

SECTION 9. (a) Effective date: upon passage or September 1, 2007, except as provided by Subsection (b).

(b) Effective date, Section 1 of this Act: January 2, 2008.