

CHAPTER 924

H.B. No. 1955

An Act relating to the regulation of certain fireworks; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 5, Insurance Code, is amended by adding Article 5.43-4 to read as follows:

Art. 5.43-4. FIREWORKS

Sec. 1. DEFINITIONS. In this article:

- (1) "Board" means the State Board of Insurance.
 - (2) "Class B fireworks" or "special fireworks" means a large fireworks device designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and that is classified as a Class B explosive by the United States Department of Transportation.
 - (3) "Class C fireworks" or "common fireworks" means a small fireworks device designed primarily to produce visible effects by combustion, that complies with the construction and chemical composition requirements of 16 C.F.R. Part 1507 (1984), or the most recently adopted version of that rule, and the labeling requirements of the United States Consumer Product Safety Commission, and that is classified as a Class C explosive by the United States Department of Transportation.
 - (4) "Department" means the United States Department of Transportation.
 - (5) "Distributor" means a person or entity that sells fireworks to jobbers, retailers, or other distributors for resale to others.
 - (6) "Fireworks" means any composition or device designed to produce a visible or audible effect by combustion, explosion, deflagration, or detonation, and that is defined as "special fireworks" by 49 C.F.R. Section 173.88(d) (1983), or as "common fireworks" by 49 C.F.R. Section 173.100(r) (1983).
 - (7) "Fire prevention officer" means the chief of a fire department, a fire marshal, the county fire marshal, the sheriff, a constable, any other local enforcement officer primarily responsible for fire prevention, or, if there is no local fire authority, the state fire marshal.
 - (8) "Illegal fireworks" means a fireworks device manufactured, distributed, or sold in violation of this article.
 - (9) "Importer" means a person who imports fireworks from a foreign country or from another state for sale to distributors or jobbers in this state.
 - (10) "Jobber" means a person who purchases fireworks for resale to retailers only.
 - (11) "Manufacturer" means a person, firm, corporation, or association that engages in the making of fireworks.
 - (12) "Person" means an individual or entity, including an owner, manager, officer, employee, or occupant.
 - (13) "Public display" means the igniting of Class B fireworks for public or private amusement.
 - (14) "Pyrotechnic operator" means an individual who, by experience, training, and passing any required examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising public displays of Class B fireworks.
 - (15) "Retailer" means a person who purchases fireworks for resale to the general public only.
 - (16) "Sale" means the sale or offering for sale any merchandise, equipment, or service, at wholesale or retail, to the public or to any person, for an agreed sum of money or other consideration.
 - (17) "State fire marshal" means the chief law enforcement officer of the state charged with the responsibility of fire prevention.
- Sec. 2. PERMISSIBLE FIREWORKS.** (a) Except as provided by Subsection (b) of this section, Class C fireworks are permissible fireworks.
- (b) The following are not permissible fireworks:
 - (1) sky rockets, also known as "bottle rockets";
 - (A) with a total propellant charge of less than four grams;
 - (B) with a casing size of less than five-eighths of an inch for the outside diameter and less than 3-1/2 inches in length; and
 - (C) with an overall length, including stick, of less than 15 inches; and
 - (2) other fireworks determined not acceptable by the United States Consumer Product Safety Commission.

(c) The term "bottle rocket" may not be used in association with the advertisement or sale of fireworks.

Sec. 3. LOCAL REGULATION. This article and rules adopted under this article have uniform force and effect throughout the state. Any lawfully enacted municipal or county ordinance, order, or rule in effect on the effective date of this article is not invalidated by this article. This article does not limit or restrict the authority of cities, towns, or villages as defined by Title 28, Revised Statutes, to enact ordinances prohibiting or further regulating fireworks.

Sec. 4. EXCEPTIONS TO APPLICABILITY OF ARTICLE. This article does not apply to:

(1) toy pistols, toy canes, toy guns, or other devices that use paper or plastic caps manufactured in accordance with 49 C.F.R. Section 173.100(p) (1983), and that are packed and shipped according to department regulations;

(2) model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models;

(3) propelling or expelling charges consisting of a mixture of sulfur, charcoal, and potassium nitrate;

(4) novelties and trick noisemakers;

(5) the sale, at wholesale, of any type of fireworks by a resident manufacturer, distributor, importer, or jobber if the fireworks are intended for shipment directly out of state in accordance with department regulations;

(6) the sale, and use in emergency situations, of pyrotechnic signaling devices or distress signals for marine, aviation, or highway use;

(7) the use of fusee and railway torpedoes by railroads;

(8) the sale of blank cartridges for use in radio, television, film, or theater productions, for signal or ceremonial purposes in athletic events, or for industrial purposes; or

(9) the use of any pyrotechnic device by military organizations.

Sec. 5. ADMINISTRATION. The board shall administer this article through the state fire marshal and may issue rules it considers necessary to its administration. The board, in promulgating necessary rules, may use standards recognized by federal law or regulation, and those published by a nationally recognized standards-making organization.

Sec. 6. LICENSES. (a) A person engaged in the business of manufacturing, distributing, jobbing, or importing fireworks to be sold or used in this state, or of supervising or conducting public fireworks displays, must obtain the appropriate license for that activity as provided by this section.

(b) A person who manufactures, stores, possesses, and sells the fireworks constructed by that person must have a manufacturer's license. The board shall set and collect an annual license fee not to exceed \$1,000 for a manufacturer's license. The licensed manufacturer may sell Class C fireworks only to distributors and jobbers, and may sell Class B fireworks only to distributors or licensed pyrotechnic operators for use in public fireworks displays in this state. A licensed manufacturer may manufacture, store, possess, and sell items other than permissible fireworks, but only for sale and delivery to authorized persons in states in which those other types of fireworks are permissible.

(c) A person who stores, possesses, and sells Class C fireworks to jobbers, retailers, and other distributors in this state must have a distributor's license. The board shall set and collect an annual license fee not to exceed \$1,500 for a distributor's license. Licensed distributors may also possess, store, and sell Class B fireworks in this state.

(d) A person who stores, possesses, and sells Class C fireworks to retailers in this state must have a jobber's license. The board shall set and collect an annual license fee not to exceed \$1,000 for a jobber's license.

(e) A person who imports and sells to any distributor or jobber in this state Class C fireworks or who imports and sells to any distributor or pyrotechnic operator in this state Class B fireworks for use only in public fireworks displays must have an importer's license. The board shall set and collect an annual license fee not to exceed \$200 for an importer's license.

(f) A person who assembles, conducts, and supervises public fireworks displays using Class B fireworks must have a pyrotechnic operator's license. The board shall set and collect an annual license fee not to exceed \$100 for a pyrotechnic operator's license. To qualify for a pyrotechnic operator's license, a person must take and pass an examination, if any should be required, conducted by the board through the state fire marshal's office.

(g) A person who conducts multiple public fireworks displays at a single location must have a public display license. The board shall set and collect an annual license fee not to exceed \$400 for a public display license. The holder of a public display license is not required to obtain a public display permit. This article does not limit the authority of the state fire marshal to inspect the location of the display or to require appropriate fire protection measures.

Sec. 7. RENEWAL. (a) A licensee may renew an unexpired license by paying the required renewal fee to the state fire marshal any time before the license expires. A license that has been expired for not more than 90 days may be renewed by paying to the state fire marshal the required annual fee plus an additional amount of one-half of the original license fee. A license that has been expired for more than 90 days but less than two years may be renewed by paying to the state fire marshal all unpaid annual fees which are in arrears plus an additional amount equal to the original license fee. A license that has been expired for two years or more may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. Not later than the 30th day before the expiration date of a license, the state fire marshal shall send written notice of the impending license expiration to the licensee at the licensee's last known address. This section does not prevent the state fire marshal from denying or refusing to renew a license for any reason provided by law or the rules of the board.

(b) The board by rule may provide for different expiration dates for the various types of licenses. If the expiration date of a license is less than one year from the date of its issuance or anniversary date, the license fee shall be prorated on the basis of the number of months during which the license is valid. The total annual fee is payable each time the license is renewed.

Sec. 8. RETAIL PERMITS. (a) A person who sells fireworks directly to the general public must obtain annually a nonrenewable retail fireworks permit for each retail location. The board shall set and collect a permit fee not to exceed \$20 for a retail fireworks permit. Permits may be purchased from a licensed manufacturer, distributor, or jobber, or through the state fire marshal's office. The holder of a retail fireworks permit may only sell fireworks to the general 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.

(b) A retail fireworks permit expires on January 31 each year. A retail fireworks permit is not renewable.

(c) Licensed manufacturers, distributors, or jobbers may obtain retail fireworks permits at any time during the year. The board shall provide permits for this purpose in books containing 20 permits each. The permit must be clearly printed with the year, date, and permit number. The manufacturer, distributor, or jobber shall keep a record of all permits issued and shall submit the record to the board through the state fire marshal in the manner prescribed by the board. Outdated permits may only be exchanged for current permits in the year following their expiration.

Sec. 9. PUBLIC DISPLAY PERMITS. The board shall set and collect a permit fee not to exceed \$50 for a Class B fireworks public display permit to be obtained from the board through the state fire marshal. A public fireworks display permit is not renewable and is valid for only one public fireworks display to be held during the hours and on the date or alternate date, if provided, stated on the permit.

Sec. 10. AGRICULTURAL, INDUSTRIAL, AND WILDLIFE CONTROL PERMITS. The board shall set and collect a permit fee not to exceed \$50 for a permit to use Class B special fireworks for agricultural, industrial, or wildlife control purposes. The applicant must specify the exact purpose for which the fireworks are to be used before a permit may be issued. The permit expires one year from the date of issuance and is not renewable.

Sec. 11. NOT TRANSFERABLE. A license or permit issued under this article is not transferable.

Sec. 12. EXAMINATIONS. The state fire marshal shall, not later than the 30th day after the date on which an examination is administered under this article, send notice to each examinee of the results of the examination. If the examination is graded or reviewed by a national testing service, the state fire marshal shall send notice to the examinee of the result of the examination not later than the 14th day after the date on which the state fire marshal receives the result from the testing service. If the notice of the examination result will be delayed for more than 90 days after the examination date, the state fire marshal shall send, before the 90th day, a notice informing the examinee of the reason for the delay. The state fire marshal shall, on written request by a person who fails the licensing examination, send the person an analysis of the person's performance on the examination.

Sec. 13. LICENSE BY RECIPROCITY. The board may waive an examination requirement for an applicant with a valid license from another state if, in the board's opinion, the license requirements of the other state are substantially equivalent to those of this state.

Sec. 14. PUBLIC DISPLAYS. (a) An adult individual or a firm, partnership, corporation, or association planning to make a public fireworks display shall submit, under rules adopted by the board, a written application to the state fire marshal for a license or permit.

(b) It is the duty of the appropriate fire prevention officer, as designated or approved by the state fire marshal, to make a site investigation to determine whether a proposed fireworks display is of a

nature or in a location that may be hazardous to property or dangerous to any person. The officer may, in the exercise of reasonable discretion, approve or disapprove the display site, and may impose reasonable conditions on the display. Following the inspection of the proposed display site, the fire prevention officer shall notify the state fire marshal of the results of the inspection, and the state fire marshal shall determine if a permit is to be issued. In this subsection, "appropriate fire prevention officer" means a person with fire prevention authority in a particular jurisdiction.

Sec. 15. **INSURANCE.** (a) An applicant for a public display license or permit must submit to the state fire marshal:

- (1) proof of a policy of public liability insurance in an amount of not less than \$300,000; or
- (2) a surety bond in an amount of not less than \$100,000 executed by a surety company authorized to do business in the state, conditioned on the payment of all sums that the licensee or permittee becomes legally obligated to pay as a result of injury caused by the public fireworks display.

(b) A public liability insurance policy required by this section must be issued by an insurer authorized to do business in this state and countersigned by a local recording agent licensed in this state. An insurer may not cancel a certificate of insurance issued under this section unless the insurer gives the state fire marshal notice of intent to cancel not later than the 10th day before the date of cancellation. A license or permit may not be issued without proof of public liability insurance or a bond as required by this section.

Sec. 16. **POWERS AND DUTIES OF THE BOARD.** (a) The board shall adopt and through the state fire marshal shall administer rules the board considers necessary for the protection, safety, and preservation of life and property, including rules regulating:

(1) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state;

(2) the conduct of public fireworks displays; and

(3) the safe storage of Class C fireworks and Class B fireworks.

(b) The board also shall:

(1) determine reasonable criteria and qualifications for licenses and permits;

(2) set license and permit fees within the limits provided by this article;

(3) determine the qualifications and examination requirements for pyrotechnics operators; and

(4) establish a procedure for reporting and processing complaints.

Sec. 17. **PROHIBITED ACTS.** (a) Fireworks sold at retail, offered for sale at retail, or possessed for retail sale within this state, may not be transported, used, or exploded in this state, unless the fireworks are properly identified as conforming to the standards of the United States Consumer Product Safety Commission and as United States Department of Transportation common fireworks. The identification must be printed on all shipping cases, fireworks devices, and retail containers. The imprint must be sufficiently conspicuous to be readily recognized by law enforcement authorities and the general public. A manufacturer may be required to submit samples of all fireworks to the state fire marshal for approval.

(b) A person or organization may not manufacture, distribute, sell at wholesale or retail, or use fireworks in a public fireworks display or for agricultural, industrial, or wildlife control purposes without obtaining the appropriate license or permit. Fireworks manufactured, distributed, sold, or used in violation of this subsection are illegal fireworks.

(c) A person may only offer for sale to the general public Class C fireworks at authorized retail locations. All mail order sales of Class C fireworks are prohibited.

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

(e) A person under 21 years of age may not be issued a pyrotechnic operator's license or a public fireworks display license or permit. The minimum age for all other licenses and permits is 18 years.

(f) A person may not:

(1) explode or ignite fireworks within 600 feet of any church, a hospital other than a veterinary hospital, an asylum, a licensed child care center, or a public or private primary or secondary school or institution of higher education;

(2) sell at retail, explode, or ignite fireworks within 100 feet of a place where flammable liquids or flammable compressed gasses are stored and dispensed;

(3) explode or ignite fireworks within 100 feet of a place where fireworks are stored or sold;

(4) ignite or discharge fireworks within or from a motor vehicle;

(5) place ignited fireworks in, or throw ignited fireworks at, a motor vehicle;

(6) conduct a public fireworks display that includes Class B fireworks unless the person is a licensed pyrotechnic operator;

(7) conduct an indoor display of fireworks that includes Class C fireworks without the approval of the local fire prevention officer;

(8) obtain or attempt to obtain a license or permit by fraudulent representation; or

(9) sell, store, manufacture, distribute, or display fireworks except as provided by this article or rules adopted by the board under this article.

(g) A manufacturer, distributor, jobber, or importer, may not sell fireworks to a person who does not hold a valid license or permit.

(h) A person may not alter or deface a license or permit. An altered or defaced license or permit is void.

Sec. 18. APPLICATIONS FOR AND HEARINGS ON LICENSES AND PERMITS. (a) The board shall adopt rules for applications and set qualifications for licenses and permits.

(b) The board may, through the state fire marshal, conduct hearings or proceedings concerning the suspension, revocation, or refusal to issue or renew a license or permit.

(c) A license or permit may be denied, suspended, or revoked, or renewal may be refused, if the board, through the state fire marshal and after notice and public hearing, finds that any provision of this article, or any rule promulgated under this article, has been violated.

(d) A person or organization that has a license or permit revoked may not reapply for the license or permit earlier than one year from the date of revocation. A person reapplying under this subsection must request a public hearing on the reissuance of the license or permit, and has the burden of proving that a license or permit should be granted.

Sec. 19. PENALTIES. (a) A person commits an offense if the person knowingly or intentionally violates Section 17 of this article.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day that a violation occurs or continues constitutes a separate offense.

(d) Venue under this section is in the county in which the offense is committed or in Travis County.

(e) If the board determines that a violation of this article creates a threat to the public safety, the board may bring suit in the district court of the county in which the person who committed the offense resides or has an office to enjoin the person from engaging in the prohibited activity. The board is not required to give bond as a condition to the issuance of injunctive relief.

(f) The state fire marshal, a fire chief, a fire marshal, their deputies, or a police or peace officer may seize illegal fireworks as defined by this article. Fireworks seized in the enforcement of this article shall be kept in the custody of the seizing agent or the sheriff of the county in which the fireworks were seized. The owner of the seized fireworks may file an action contesting the seizure in a district court in the county in which the fireworks were seized. The court may, not later than the 30th day after the hearing on the seizure, authorize the return of part or all of the confiscated fireworks. The court shall order any fireworks not returned to be destroyed. If an action contesting the seizure is not filed by the 30th day after the seizure, the seizing agent or the sheriff shall destroy the fireworks.

Sec. 20. DEPOSIT OF FEES IN TREASURY. The fees collected under this article shall be deposited in the state treasury to the credit of the insurance board operating fund and may not be appropriated for a purpose other than activities of the State Board of Insurance.

SECTION 2. Chapter 498, Acts of the 55th Legislature, Regular Session, 1957 (Article 9205, Vernon's Texas Civil Statutes), is repealed.

SECTION 3. (a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

(b) The fees to which this Act applies that were in effect before the effective date of this Act and that were adopted under the law repealed by this Act remain in effect until the State Board of Insurance adopts new fees under this Act, and the former law is continued in effect for this purpose.

SECTION 4. This Act takes effect January 2, 1986.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 14, 1985, by a non-record vote; passed by the Senate on May 24, 1985, by the following vote: Yeas 29, Nays 0.

Approved: June 15, 1985

Effective: January 2, 1986