

**SUBJECT:** The authority of a municipality to confiscate packaged fireworks

**COMMITTEE:** Urban Affairs — committee substitute recommended

**VOTE:** 5 ayes — Alvarado, Elkins, Leach, J. Rodriguez, Sanford  
0 nays  
2 absent — Dutton, Anchia

**WITNESSES:** For — Joe Daughtry, Texas Fireworks Association; Chester Davis, Texas Pyrotechnic Association; Robert Guerra, Mr. G's Fireworks; Dianna Wildman; (*Registered, but did not testify*: Kathy Barber, NFIB Texas; Roy Callais; Eric Glenn, Texas Pyrotechnic Association)  
  
Against — Andy Cardiel, City of Corpus Christi; (*Registered, but did not testify*: Lindsey Baker, City of Denton; Jeff Coyle, City of San Antonio; Shanna Igo, Texas Municipal League; T.J. Patterson, City of Fort Worth; Tom Tagliabue, City of Corpus Christi)

**BACKGROUND:** Local Government Code, sec. 342.003 allows the governing body of a municipality to prohibit or otherwise regulate the use of fireworks and firearms.

**DIGEST:** CSHB 1813 would state that a type A general law municipality was not authorized to confiscate packaged, unopened fireworks. For a home-rule municipality that governed fireworks, the bill would create an affirmative defense to prosecution for possession of fireworks brought under a municipal ordinance if:

- the defendant was operating a motor vehicle in a public place;
- the defendant was a passenger in a motor vehicle that was operated in a public place; and
- the fireworks were not in the passenger area of the vehicle, but were in a locked glove compartment, locked storage area, the trunk, or the area behind the last upright seat of a vehicle that did not have a trunk.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 1813 would prevent unnecessary confiscation of fireworks from consumers where no violation of the law was intended. Many people buy fireworks legally in one municipality and then travel through a municipality that bans the possession of fireworks while on their way to another municipality where they could use them legally. The bill would not change the power cities have to ban use of all fireworks, including those without a stick, fin, or rudder. It also would not affect the governor's ability to ban use of fireworks during times of drought.

The bill would not increase any public safety risk because the fireworks would have to be packaged, unopened, and in a trunk or otherwise out of reach. When fireworks are packaged, unopened, and secured, they do not cause fires. Fireworks have caused very few, if any, wildfires in recent Texas history.

The defense to prosecution was developed in consultation with the fire department of Round Rock, among many cities with a high risk of fires due to drought. The bill only would allow fireworks to be safely transported through a municipality and would not authorize their use in a municipality that did not allow fireworks.

**OPPONENTS  
SAY:**

CSHB 1813 would preempt a municipality's ability to enforce ordinances prohibiting fireworks and would increase the risk to public safety. Fireworks are one of the most dangerous products a consumer can purchase and their misuse can lead to fires and injuries. The governor's ban on fireworks during a drought only applies to those fireworks with a stick, fin, or rudder, not all fireworks, and would not preclude the sale of certain types of fireworks during a drought.