

BILL ANALYSIS

C.S.H.B. 3907
By: Frullo
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed a need to improve the safety of certain locations at which fireworks are sold. C.S.H.B. 3907 seeks to address this issue by providing for the inspection of retail fireworks sites and for certain requirements applicable to indoor retail fireworks sites.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3907 amends the Occupations Code to authorize a local fire prevention officer to inspect a retail fireworks site for a fire or life safety hazard and assess and collect an inspection fee for that inspection if the officer is authorized to conduct the inspection under applicable state law and is a county fire marshal of the county in which the site is located or a fire prevention officer of an emergency services district in which the site is located, provided the county in which the site is located has not appointed a county fire marshal or the county fire marshal of that county requests the officer to conduct the inspection. The bill authorizes a local fire prevention officer who inspects a retail fireworks site for a fire or life safety hazard to assess the inspection fee and collect payment of that fee from the person who obtained a retail fireworks permit to sell fireworks at the site and sets out a schedule for those fees based on the size of the largest building at the site. The bill establishes that such a fee may be assessed and collected for a particular retail fireworks site only once during a calendar year for that site and only by a local fire prevention officer authorized to conduct the site inspection and to assess and collect the fee.

C.S.H.B. 3907 authorizes a local fire prevention officer who inspects a retail fireworks site for a fire or life safety hazard to determine whether the site complies with certain requirements imposed by the bill on indoor retail fireworks sites. The bill's provisions regarding the inspection of retail fireworks sites expressly do not grant additional authority to a local fire prevention officer nor limit an officer's authority to conduct an inspection of a retail fireworks site for a fire or life safety hazard more than once in a calendar year provided that the site is assessed an inspection fee not more than once in that calendar year and the inspection complies with the other requirements of those bill provisions. Those bill provisions expressly control over statutory provisions relating to county fire protection or to emergency services districts to the extent of any conflict.

C.S.H.B. 3907 requires the fireworks sales building of an indoor retail fireworks site to be a freestanding durable structure with only one story of the building accessible to the public. The

bill prohibits the fireworks sales building of an indoor retail fireworks site from being a tent, boat, or mobile vehicle or part of a multiuse or multi-tenant building. The bill requires the sales display area of an indoor retail fireworks site to be sufficiently designed to prevent customers from handling fireworks unless an attendant is directly assisting the customer. The bill authorizes the commissioner of insurance to exempt the office area used in the operation of an indoor retail fireworks site from commissioner rules prescribing distance requirements between fireworks storage and inhabited buildings if, after inspecting the office area at the request of the permit holder for the site, the state fire marshal confirms and reports to the commissioner that the office area is separated by a one-hour fire-rated wall from any fireworks sales or storage area.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3907 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 2154.001, Occupations Code, is amended by adding Subdivisions (9-a), (16-a), and (16-b) to read as follows:

(9-a) "Indoor retail fireworks site" means a retail fireworks site, other than a retail stand, that sells fireworks 1.4G from a building or structure.

(16-a) "Retail fireworks site" means a location that has a valid retail fireworks permit issued under Section 2154.202.

(16-b) "Retail stand" means a retail fireworks site that sells fireworks 1.4G over the counter to members of the general public who always remain outside the structure.

SECTION 2. Subchapter E, Chapter 2154, Occupations Code, is amended by adding Section 2154.2025 to read as follows:

Sec. 2154.2025. INSPECTION OF RETAIL FIREWORKS SITE; FEES.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 2154.001, Occupations Code, is amended by adding Subdivisions (9-a), (16-a), and (16-b) to read as follows:

(9-a) "Indoor retail fireworks site" means a retail fireworks site, other than a retail fireworks stand, that sells Fireworks 1.4G from a building or structure.

(16-a) "Retail fireworks site" means a retail location for which a person has obtained a current retail fireworks permit under Section 2154.202 to sell fireworks.

(16-b) "Retail fireworks stand" means a structure that is a retail fireworks site from which Fireworks 1.4G are sold over the counter to members of the general public who always remain outside of the structure.

SECTION 2. Subchapter E, Chapter 2154, Occupations Code, is amended by adding Section 2154.2025 to read as follows:

Sec. 2154.2025. INSPECTION OF RETAIL FIREWORKS SITES. (a) In this section:

(1) "Fire or life safety hazard" has the meaning assigned by Section 352.016, Local Government Code.

(2) "Local fire prevention officer" means:

(A) a county fire marshal; or

(B) a fire prevention officer of an emergency services district.

(b) A local fire prevention officer may inspect a retail fireworks site for a fire or life safety hazard and assess and collect an

(See Subsection (b) below.)

(a) For purposes of this section, the local fire prevention officer with jurisdiction is:

(1) except as provided by Subdivision (2), the county fire marshal, if the county in which the retail fireworks site is located has appointed a county fire marshal; or

(2) the fire prevention officer of the emergency services district in which the retail fireworks site is located, if the county in which the retail fireworks site is located has not appointed a county fire marshal or the county fire marshal in that county requests the emergency services district to conduct the inspection.

(b) If otherwise authorized under state law, a local fire prevention officer may inspect a retail fireworks site. Notwithstanding any other law, if a local fire prevention officer is authorized under state law to assess a fee for performing an inspection of a retail fireworks site, the inspection fee:

(1) may be assessed for a particular retail fireworks site only once during a calendar year;

(2) if assessed, shall be assessed and collected only by the local fire prevention officer with jurisdiction over the retail fireworks site; and

(3) may not exceed the fee established by 28 T.A.C. Section 34.340 for an inspection conducted by the state fire marshal.

(See Subsection (b)(1) above.)

inspection fee under Section 352.016, Local Government Code, or Section 775.040, Health and Safety Code, as applicable, for that inspection if:

(1) the local fire prevention officer is authorized to conduct the inspection under Chapter 352, Local Government Code, or Chapter 775, Health and Safety Code, as applicable; and

(2) the local fire prevention officer is:

(A) a county fire marshal of the county in which the site is located; or

(B) a fire prevention officer of an emergency services district in which the site is located provided:

(i) the county in which the site is located has not appointed a county fire marshal; or

(ii) the county fire marshal of the county in which the site is located requests the fire prevention officer to conduct the inspection.

(c) A local fire prevention officer who inspects a retail fireworks site for a fire or life safety hazard as authorized by Chapter 352, Local Government Code, or Chapter 775, Health and Safety Code, as applicable, may assess the inspection fee provided by Section 352.016, Local Government Code, or by Section 775.040, Health and Safety Code, as applicable, and collect payment of that fee from the person who obtained a retail fireworks permit under Section 2154.202 to sell fireworks at the site. The inspection fee may not exceed:

(1) \$100, if the largest building at the site is less than 25,000 square feet, plus \$25 for each additional building, other than the largest building, located at the site;

(2) \$200, if the largest building at the site is 25,000 square feet or more, but less than 100,000 square feet, plus \$25 for each additional building, other than the largest building, located at the site; and

(3) \$300, if the largest building at the site is 100,000 square feet or more, plus \$25 for each additional building, other than the largest building, located at the site.

(d) An inspection fee under Section 352.016, Local Government Code, or Section 775.040, Health and Safety Code, as applicable, may be assessed and collected for the inspection of a retail fireworks site for a fire or life safety hazard only:

(1) once in a calendar year for that site; and

(c) To the extent of a conflict between this section and other state law, this section prevails.

SECTION 3. Chapter 2154, Occupations Code, is amended by adding Subchapter E-1 to read as follows:

SUBCHAPTER E-1. INDOOR RETAIL FIREWORKS SITES

Sec. 2154.221. FREE-STANDING STRUCTURE. The fireworks sales building of an indoor retail fireworks site shall be a free-standing durable structure with only one story of space accessible to the public. The fireworks sales building of a site shall not be a tent, boat, or mobile vehicle. The fireworks sales area of a site shall not be part of a multi-use or multi-tenant building.

Sec. 2154.222. SALES DISPLAY AREA.

Sec. 2154.223. OFFICE AREA. An office area used for the operation of an indoor retail fireworks site that is separated by a one-hour fire-rated wall from the fireworks sales or storage area may be exempted by commissioner rule from the distance requirements prescribed by commissioner rule if the office area is reported to and reviewed by the state fire marshal.

(2) by a local fire prevention officer authorized under Subsection (b) to inspect the site for a fire or life safety hazard and to assess and collect an inspection fee.

(e) A local fire prevention officer who inspects a retail fireworks site for a fire or life safety hazard may determine whether the site complies with the requirements of Sections 2154.221 and 2154.222.

(f) Except as otherwise provided by Subsection (e), this section does not grant additional authority to a local fire prevention officer.

(g) This section does not limit the authority of a local fire prevention officer to conduct an inspection of a retail fireworks site for a fire or life safety hazard more than once in a calendar year provided that the site is assessed an inspection fee not more than once in that calendar year and the inspection complies with other requirements of this section.

(h) To the extent of any conflict between this section and Chapter 352, Local Government Code, or Chapter 775, Health and Safety Code, this section controls.

SECTION 3. Chapter 2154, Occupations Code, is amended by adding Subchapter E-1 to read as follows:

SUBCHAPTER E-1. INDOOR RETAIL FIREWORKS SITES

Sec. 2154.221. FIREWORKS SALES BUILDING. The fireworks sales building of an indoor retail fireworks site must be a freestanding durable structure with only one story of the building accessible to the public. The fireworks sales building of an indoor retail fireworks site may not be:

- (1) a tent, boat, or mobile vehicle; or
- (2) part of a multiuse or multi-tenant building.

Sec. 2154.222. SALES DISPLAY AREA.

Sec. 2154.223. OFFICE AREA EXEMPTION. The commissioner may exempt the office area used in the operation of an indoor retail fireworks site from commissioner rules prescribing distance requirements between fireworks storage and inhabited buildings if, after inspecting the office area at the request of the permit holder for the site, the state fire marshal

confirms and reports to the commissioner that the office area is separated by a one-hour fire-rated wall from any fireworks sales or storage area.

(See Sec. 2154.233 above.)

Sec. 2154.224. COMPLIANCE WITH SUBCHAPTER. Compliance with this subchapter may be addressed in an inspection conducted under Section 2154.2025.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 4. Same as introduced version.