

SUBJECT: Creating an offense for discharging fireworks near a residence or building

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Riddle, Denny, Escobar, Raymond, Reyna

1 nay — Keel

3 absent — Pena, Hodge, P. Moreno

WITNESSES: For — Steve Brewer, Carole Lenz, Harris County Precinct 3; Laura K. Culin; Amanda Jones, Harris County; Carole Lenz, Harris County Precinct 3 Commissioner Steve Radack; Mike Montgomery, Harris County Fire and Emergency Services

Against — Chester Davis, Texas Pyrotechnic Association, American Fireworks; Eric Glenn, Texas Pyrotechnic Association; Kent Herzog, Fireworks Warehouse

BACKGROUND: The Occupations Code, chp. 2154, regulates the use and sale of fireworks. Among other things, the law prohibits individuals from:

- exploding or igniting fireworks within 600 feet of any church, hospital other than a veterinary hospital, asylum, a licensed child care center, or a public or private primary or secondary school or institution of higher education unless the person receives authorization in writing from that organization;
- exploding or igniting fireworks within 100 feet of a place where flammable liquids or flammable compressed gasses are stored and dispensed;
- exploding or igniting fireworks within 100 feet of a place where fireworks are stored or sold; or
- igniting or discharging fireworks in or from a motor vehicle, or throwing fireworks at a vehicle.

If violation of this offense causes less than \$200 in property damage and no one was injured or killed, the offense is a class C misdemeanor, punishable by a maximum fine of \$500.

Harassment is punishable under the Penal Code, sec. 42.07.

DIGEST:

CSHB 1629 would amend the definition of harassment in the Penal Code to include discharging fireworks within 30 feet of a residential dwelling or commercial building, or projecting fireworks toward a residential dwelling or commercial building.

This offense would be a class C misdemeanor, punishable by a maximum fine of \$500. The bill would create a defense to prosecution if the person discharged the fireworks on or toward property that the person had a right to occupy.

CSHB 1629 defines "residential dwelling or commercial building" as a single-family home, a duplex, a triplex, apartment, or other form of multifamily housing, a motel or hotel, a mobile home, a place used for temporary housing, and a building that is not primarily used as a residence.

The bill would not preempt a municipal ordinance regulating the discharge of fireworks within the territorial limits of the city.

CSHB 1629 would take effect immediately, or if it does not receive the necessary vote, it would take effect on September 1, 2005.

SUPPORTERS
SAY:

Since 2000, in Harris County alone there have been 115 fires directly attributable to the use of fireworks. This has caused about \$1.6 million in property damage and severe injury. Nevertheless, state law does not prohibit the use of fireworks near someone else's home. CSHB 1629 would create reasonable restrictions on the use of fireworks in residential areas, protecting citizens from the loud noises, property damage, and injuries caused by the irresponsible use of fireworks.

The bill would not unfairly restrict property rights. The purpose of the bill would not be to prohibit the use of fireworks on private property but to promote responsible use of fireworks. Individuals still could use fireworks on their own property as long as it was more than 30 feet from another property, a reasonable distance to ensure a neighbor's safety. While fireworks may not be inherently dangerous, if used irresponsibly they could cause fire or severe injury.

OPPONENTS
SAY:

CSHB 1629 unfairly and unnecessarily would restrict property rights and criminalize those who chose to celebrate the holidays in the privacy of their own homes. The bill unfairly would restrict fireworks use to those who could afford to purchase property large enough to be 30 or more feet from their neighbors. Use of fireworks is an American tradition on July 4th and New Year's Eve. Individuals should be free to use fireworks in the privacy of their homes without fear of criminal charges.

Fireworks are not dangerous if used responsibly. According to the National Safety Council, an organization that monitors public safety, an individual is more than 1,000 times more likely to die from a pedestrian accident than from the discharge of fireworks. Data from the U.S. Product Safety Commission indicate that a child is almost 100 times more likely to be injured by a bicycle than by fireworks. According to the American Pyrotechnics Association, while there has been a 661 percent increase in fireworks consumption since 1976, the number of injuries since then has decreased by 88.5 percent.

NOTES:

The original would have required an offender to discharge fireworks "in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another." The substitute expanded application of the offense to a commercial building as well as a residential dwelling. It also created a defense to the prosecution and specified that the bill would not apply to a municipal ordinance regulating the discharge of fireworks within the city limits.