

**SUBJECT:** Authorizing Harris County to prohibit sale and use of fireworks

**COMMITTEE:** County Affairs — favorable, without amendment

**VOTE:** 5 ayes — Lewis, W. Smith, Casteel, Chisum, Flynn

1 nay — Quintanilla

3 absent — Farabee, Farrar, Olivo

**WITNESSES:** For — Jim Allison, County Judges and Commissioners Association of Texas; Jerry Eversole, Harris County Precinct 4; Carole Lenz, Harris County Commissioner's Office; Don McWilliams; Mike Montgomery, Harris County Fire and Emergency Services; Jim Windsor, Lakewood Forest Homeowners Association and Cypress Creek United Civic Association

Against — Tom Bargas and Benny Gardner, Texas Fireworks Association; Shannon Brinkley and Joseph F. Scarlata, Brinkata Corp.; Joe Daughtry; Chester Davis and Royce Trout, Texas Pyrotechnic Association; Johnnie Pate; Travis Robbins

**BACKGROUND:** Under Penal Code, sec. 28.03, a person commits criminal mischief if, without the effective consent of the owner, he or she intentionally or knowingly:

- damages or destroys the owner's tangible property;
- tampers with the owner's tangible property and causes pecuniary loss or substantial inconvenience to the owner or a third person; or
- makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

Criminal mischief is punishable as a Class C misdemeanor through a first-degree felony, depending on the amount of pecuniary loss.

**DIGEST:** HB 215 would authorize the commissioners court of a county with a population of 3.3 million or more (currently, Harris County) to prohibit or otherwise regulate the sale, possession, or use of fireworks in any part of the unincorporated area of the county. Fireworks would mean any composition or

device for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation. The bill would not apply to:

- toy pistols, toy canes, toy guns, or other devices that use paper or plastic caps in sheets, strips, rolls, or individual caps within certain limits;
- model rocket motors designed, sold, and used to propel recoverable models;
- propelling or expelling charges with sulfur, charcoal, and potassium nitrate;
- novelties or trick noisemakers;
- the sale, at wholesale, of any type of fireworks by a resident manufacturer, distributor, importer, or jobber if the fireworks were intended for shipment directly out of state in accordance with federal regulations;
- the sale, and use in emergency situations, of pyrotechnic signaling devices or distress signals for marine, aviation, or highway use;
- the use of fusee and railway torpedoes by railroads;
- 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;
- the use of any pyrotechnic device by a military organization; or
- a public fireworks display conducted by a licensed pyrotechnic operator.

If the county adopted an order prohibiting or regulating fireworks, a person selling fireworks in the county would have to provide reasonable notice of the order at every location where the person sold fireworks, as well as reasonable notice of any area where sale, possession, or use of fireworks was prohibited or regulated.

A commissioners court that adopted an order prohibiting or regulating fireworks would have to send a copy of the order to the state fire marshal by the 30th day after the date the order was adopted. The state fire marshal would have to send a copy of each order received to licensed manufacturers, distributors, and jobbers in the affected county by the 30th day after the date the fire marshal received the order.

A person would commit an offense if the person knowingly violated a prohibition or other regulation authorized by the bill. The offense would be a Class C misdemeanor, punishable by a maximum fine of \$500.

The 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, 2003.

**SUPPORTERS  
SAY:**

Harris County residents face a growing danger posed by the excessive and irresponsible use of fireworks, often by juveniles, and HB 215 would help to reduce this danger. Most years, at least one major fire or serious injury results in the county from fireworks use. The rockets and other fireworks now sold in unincorporated Harris County, together with the unincorporated area's growing population and density — it is home to about half of all county residents — result in an increasing likelihood that the use of fireworks will interfere with others' private property. Nowadays during the fireworks season, some homeowners decide to stay home to guard against fire. Unlike Houston and other cities, the county cannot currently legislate to remedy its problem. The state must act when certain people's actions interfere with others' rights.

HB 215 would help remedy an important and costly problem for emergency response services in the county. The county's fire and emergency services respond to between 800 and 1,000 complaints about fireworks each July 4 sale season. On July 4, they normally register one complaint each minute. The county sheriff receives additional calls. Regulating the use of fireworks in Harris County would help minimize these contacts.

Fireworks also subject their vendors to risks. County inspectors have discovered threats posed by irregular electrical connections and flammable liquids located on premises where vendors sell fireworks. Transient workers who work at the fireworks tents often live there during the sale season and are not well trained. The sites also often serve as centers of illegal drug dealing. The conditions at these sites threaten the lives of the vendors. HB 215 would allow Harris County to establish and enforce clear standards for these facilities.

Existing civil and criminal laws have not diminished the excessive and irresponsible use of fireworks in Harris County. A charge of criminal mischief

requires proving wrongful conduct, and this has not deterred the irresponsible use of fireworks, which does not always even result in a crime. The regulation authorized by HB 215 would help solve the problem.

**OPPONENTS  
SAY:**

HB 215 would authorize a drastic remedy — prohibition of fireworks — to address a minor problem that may exist in Harris County. As a consequence, the county and state likely would lose significant sales-tax revenue from fireworks sales. Volunteer groups, which comprise more than 90 percent of the vendors, would lose annual revenue of about \$1 million each year. Also, many people decide to live in unincorporated Harris County precisely to avoid the type of regulation that the bill would authorize.

The law already regulates the use and abuse of fireworks. A person who uses fireworks improperly and damages the property of another already is subject to criminal penalty. Restrictions on sales during droughts and regulations of the Consumer Products Safety Commission also limit the sale and type of fireworks available. Injuries caused by fireworks decline every year because of design and material improvements. If sale and use of lawful fireworks were prohibited in Harris County, people could buy unregulated and more powerful and dangerous fireworks from the informal market.

HB 215 would hurt small business people who operate fireworks stands and would introduce a trend of county-by-county regulation of the devices. Rather than authorize elimination of these small businesses in Harris County, the bill should limit any authorized prohibition to only certain fireworks.

**OTHER  
OPPONENTS  
SAY:**

County commissioners should have broader authority to protect residents' health, safety, and welfare. The Legislature should not pursue piecemeal legislation to address the health and safety issues of particular counties.

**NOTES:**

The companion bill, SB 123 by Lindsay, has been referred to the Senate Intergovernmental Relations Committee.