

HB1987

HD2 SD1



**COMMENTS OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 1987, H.D. 2, S.D. 1, RELATING TO FIREWORKS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

DATE: Tuesday, March 23, 2010 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call
MARK K. MIYAHIRA, Deputy Attorney General, at 586-1160.

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

This bill provides for the forfeiture of property related to violations of certain sections of the fireworks law, and establishes a civil cause of action to abate the illegal importation, transfer, and sale of aerial devices, display fireworks, and articles pyrotechnic.

This bill proposes to add violations of section 132D-14(a)(1) or (3), which prohibits the illegal importation, transfer, and sale of aerial devices, display fireworks, and articles pyrotechnic, to the list of covered offenses that are a nuisance under the nuisance abatement law. We note that nuisance abatement lawsuits are unlikely to be an effective remedy in situations involving fireworks offenses under section 132D-14(a)(1) or (3).

Under the nuisance abatement law, every building, premises, or place used for the purpose of violating a covered offense and every building, premises, or place where the violations are held or occur is a nuisance. The purpose of a nuisance abatement suit is to enjoin, abate, and prevent the occurrence or reoccurrence of a public or private nuisance in the place that

is being used to violate a covered offense or where the violation occurs. A nuisance abatement suit may also result in an injunction prohibiting a person or persons causing, maintaining, aiding, abetting, or permitting the nuisance from residing in or entering into a building, premises, or place where the nuisance exists.

Nuisance abatement lawsuits are most effective where the nuisance is an ongoing problem; for example, when a house or business is being used distribute or manufacture drugs. In contrast, in cases involving fireworks violations under section 132D-14(a)(1) or (3), the illegal activity is likely to be temporary, transitory, and seasonal. In such cases, a nuisance abatement lawsuit is unlikely to be an effective remedy because the nuisance may no longer exist by the time a lawsuit is filed.

Linda Lingle
Governor



Darwin L.D. Ching
Director

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
State Fire Council
830 Punchbowl Street
Honolulu, Hawaii 96813

March 22, 2010

The Honorable Brian Taniguchi, Chair
Committee on Judiciary and Government Operations
The State Senate
State Capitol, Room 219
Honolulu, Hawaii 96813

Dear Chair Taniguchi:

Subject: H.B. 1987, H.D. 2, S.D. 1 Relating to Fireworks

I am Kenneth G. Silva, Chair of the State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD offer the following comments:

1. We support the statewide ban of consumer fireworks, with the exception of special events and professional public fireworks displays.
2. We believe each county should determine the potential hazards of fireworks and the benefit to their community by further restricting fireworks use based on each county's needs and resources. Chapter 132D-17, Hawaii Revised Statutes states that no county may enact stricter laws or rules relating to the present fireworks law.
3. We support measures that make the arrest and prosecution for illegal purchase, possession, setting off, igniting, or discharging of fireworks easier and increase the penalties and consequences for convictions of fireworks violations.

Should you have any questions, please call SFC Administrator Socrates Bratakos at 723-7151.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kenneth G. Silva".

KENNETH G. SILVA
Chair

KGS/LR:bh

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Improving Life

One Breath at a Time

Founded in 1904, the
American Lung Association
includes affiliated associations
throughout the U.S.



TO: Senate Committee on Judiciary and Government Operations

FOR: Hearing S cheduled for 9:30 a.m. Tuesday March 23, 2010

**RE: TESTIMONY IN SUPPORT OF THE INTENT OF HB 1987, HD2, SD1
RELATING TO FIREWORKS**

Chair Taniguchi, Vice Chair Takamine and Committee Members:

The American Lung Association in Hawaii supports any that measure seeks to reduce the impact of fireworks. However with over 175,000 people in Hawaii, or nearly 13 percent of our population, suffering from some type of lung disease that is made worse by exposure to the particulate smoke from fireworks, **we believe a ban on consumer fireworks, including novelty items would do far more to protect our collective health** than would this abatement measure aimed at curbing the use of illegal fireworks. Assuring the cleanest air for everyone in Hawaii is important, especially with the recent increase in volcanic activity that compounds the danger of fireworks.

Hawaii has the second highest rate in the nation for childhood asthma and many adults, especially the elderly, suffer from chronic lung disease including emphysema and COPD (Chronic Obstructive Pulmonary Disease). Even people who do not have lung problems often report eye, throat and lung irritation on New Year's Eve.

It is time to act responsibly and stop this willful disregard for the health of our fellow citizens, especially those who might be unable to speak for themselves – our children and the elderly. Specific action to ban all fireworks with an exemption for religious and cultural use is what is called for. **We support a statewide ban or, as an alternative, we strongly recommend adding language that allows counties to have the authority to regulate fireworks.**

Respectfully, submitted,

Jean Evans, MPH
Executive Director
American Lung Association in Hawaii



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March 22, 2010

The Honorable Brian T. Taniguchi, Chair

Senate Judiciary & Government Operations Committee

Dear Senator:

While our clients are opposed to banning consumer fireworks, we realize that laws must be changed to provide stringent compliance against violations of permissible hours where consumer fireworks are allowed, and to eliminate entirely or at least to reduce greatly the illegal import and sale of aerial fireworks.

We support the forfeiture provisions in HB 1987 HD2 SD1 addressing illegal aerals, but we also need something that is not as severe and easier for police officers to administer in order to address citizens setting off fireworks at illegal times.

We ask that the following proposal be considered as an addition to the current language in HB 1987 HD2 SD1, as it would create a civil infraction.

Dick Botti & Lauren Zirbel

Proposal for your consideration

Civil infraction.

(a) The County Commission of each county shall adopt rules necessary to enforce the civil penalty provisions for the violations of this chapter. A civil penalty under this section may not exceed one thousand dollars per day for each violation and is subject to the procedural requirements under this section.

(b)(1) The civil penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation with reasonable particularity. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner which shows proof of receipt. Any penalty imposed by this section shall become due and payable twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (2) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (3) of this section.

(2) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the county court in which the notice of civil penalty was imposed for the remission or mitigation of the penalty. Upon receipt of the application, the county court may remit or mitigate the penalty upon whatever terms the court deems proper, giving consideration to the degree of hazard associated with the violation. The court may only grant a remission or mitigation that it deems to be in the best interests of carrying out the purposes of this chapter. The court may ascertain the facts regarding all such applications in a manner it deems proper. When an application for remission or mitigation is made, any penalty incurred under this section becomes due and payable twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (3) of this section.

(3) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter _____, and applicable rules of the court.

(4) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(5) The county prosecuting attorney or the state of Hawaii attorney general may bring an action in the county court or any county in which the violator may do business to collect any penalty imposed under this chapter.

(6) All penalties imposed under this section shall be paid to the general fund of the county in which the final judgment is obtained and shall be credited in the following manner: (i) to the court for necessary court costs associated with this proceeding; (ii) fifty percent (50%) of the remaining funds to the county fire department for support of the statewide public education campaign developed jointly by the county fire departments and the licensed fireworks importers, wholesalers and retailers. The public education program shall discourage people from buying illegal aerial fireworks, inform them of the penalties for buying and using illegal aerial fireworks, warn them of the dangers of using illegal aerial fireworks, and educate Hawaii's citizens who buy legal fireworks on how to use legal fireworks legally, safely and responsibly with particular attention to concern for their neighbors and their neighbors pets and property; and (ii) the remaining funds to the county police department for the enforcement of this chapter.