

ACT 233

S.B. NO. 680

A Bill for an Act Relating to Fireworks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the widespread discharge of fireworks in all counties in the State creates a serious safety hazard for persons and property as well as a severe health risk—particularly for the young, the elderly, and others with respiratory ailments—as a result of concentrated sulfuric smoke emissions. The Honolulu fire department has stated that they received many reports of dangerous fires caused by illegal aerial fireworks during this year’s New Year celebrations, with serious injuries and death having occurred. The widespread use of fireworks also burdens county resources.

The legislature also finds that fireworks in Hawaii are used in celebrations of cultural significance to the people of the State, including the New Year, Chinese New Year, and Fourth of July.

The purpose of this Act is to permit the use of fireworks in the State only for cultural purposes and public displays as established in this Act; provided that the amount of firecrackers to be sold to an individual, shall be limited to 5,000 firecrackers per permit; and provided further that fireworks for cultural purposes shall not be purchased more than five days before the event. This Act also increases the license fees for the importation, sale, or storage of fireworks. In addition, this Act reinforces the prohibition on the use of aerial common fireworks and special fireworks in the State, except for permitted use in public displays, and changes the penalties for importation, sale, possession, and use of aerial common fireworks.

SECTION 2. Chapter 132D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§132D- Importation of aerial common fireworks, special fireworks, or both, for public display. Aerial common fireworks, special fireworks, or both, shall only be imported and stored, if necessary, in an amount sufficient for an anticipated three-month inventory; provided that if a licensee under section 132D-7 provides aerial common fireworks, special fireworks, or both, for public displays as allowed under section 132D-16 more than once a month, the licensee may import or store, if necessary, sufficient aerial common fireworks, special fireworks, or both, for a six-month inventory.”

SECTION 3. Chapter 132D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§132D- Licensee; bill of lading, notification, storage, limits on sales.

(a) Any person who has obtained a license under section 132D-7 and ships fireworks into the State shall:

- (1) Clearly designate the types of fireworks in each shipment on the bill of lading or shipping manifest with specificity;
- (2) Declare on the bill of lading or shipping manifest the gross weight of aerial common fireworks, non-aerial common fireworks, and special fireworks to be imported in each shipment and the location of the storage facility, if applicable, in which the fireworks are to be stored;
- (3) Prior to shipment and when booking each shipment of fireworks, notify the appropriate county official as determined by the county regarding whether the shipment will be distributed from:
 - (A) Pier to pier;
 - (B) Pier to warehouse or storage facility; or
 - (C) Pier to redistribution; and
- (4) At the time shipping is booked, the importer or consignee shall notify the appropriate county official as determined by the county in writing of the expected shipment's landing date.

(b) The fire department of a county, in which a shipment of fireworks has landed and becomes subject to the jurisdiction of the fire department, shall be allowed to inspect, if it chooses, any shipment declared on the shipping manifest as fireworks.

(c) The facility in which fireworks are to be stored must:

- (1) Have received approval fifteen days prior to the shipment's arrival from the appropriate county fire department; and
- (2) Meet all state and county fire and safety codes.

(d) Any fireworks landed in the State shall be subject to seizure and forfeiture if:

- (1) The importer or consignee does not have in the importer's or consignee's possession a valid license to import fireworks under section 132D-7;
- (2) The consignee does not have a valid license to store fireworks under section 132D-7; or
- (3) The fireworks have not been declared or have been misdeclared in violation of section (a).

(e) No person holding a retailer license to sell non-aerial common fireworks shall be allowed to sell non-aerial common fireworks commonly known as fire-crackers in a packet size larger than 5,000 individual units. Any person violating this subsection shall be guilty of a misdemeanor.

(f) Any person violating subsections (a), (c), or (d) shall be subject to the following for shipments of fireworks of:

- (1) Twenty-five pounds or less gross weight shall be a petty misdemeanor;
- (2) Over twenty-five pounds to three hundred pounds gross weight shall be a misdemeanor;
- (3) Over three hundred pounds to ten thousand pounds gross weight shall be a class C felony; and
- (4) More than ten thousand pounds gross weight shall be a class B felony.”

SECTION 4. Section 132D-2,¹ Hawaii Revised Statutes, is amended as follows:

1. By inserting three new definitions to read:

““Cultural” means relating to the arts, customs, traditions, mores, and history of all of the various ethnic groups of Hawaii.

“Import” (and any nounal, verbal, adjectival, adverbial, and other equivalent form of the term used interchangeably in this chapter) means to bring or attempt to bring fireworks into the State or to cause fireworks to be brought into the State. “Public display” means a public exhibition and the use of fireworks for commercial activities (including such activities as movie or television production).”

2. By amending the definition of “aerial common fireworks” to read:

““Aerial common fireworks” means any firework, classified as common fireworks by the United States Bureau of Explosives or contained in the regulations of the United States Department of Transportation and designated as UN 0336 1.4G, which produces an audible or visible effect and which is designed to rise into the air and explode or detonate in the air or to fly about above the ground and which is prohibited for use by any person who does not have a [display permit] permit for public display issued by a county[.] under section 132D-16. “Aerial common fireworks” include firework items commonly known as bottle rockets, sky rockets, missile-type rockets, helicopters, torpedoes, daygo bombs, roman candles, flying pigs, and jumping jacks, which move about the ground farther than inside a circle with a radius of twelve feet as measured from the point where the item was placed and ignited, [types of balloons which require fire underneath to propel the same,] aerial shells, and mines.”

SECTION 5. Section 132D-3, Hawaii Revised Statutes, is amended to read as follows:

“[[§132D-3]] Permissible uses of non-aerial common fireworks. Non-aerial common fireworks may be set off, ignited, discharged, or otherwise caused to explode within the State only:

- (1) From 9:00 p.m. on New Year’s Eve to 1:00 a.m. on New Year’s Day; from [9:00 p.m.] 7:00 a.m. [Chinese New Year’s Eve] to [1:00 a.m.] 7:00 p.m. on Chinese New Year’s Day; and from [9:00] 1:00 p.m. to 9:00 p.m. on the Fourth of July [to 1:00 a.m. July 5]; or
- (2) From 9:00 a.m. to 9:00 p.m. as allowed by permit pursuant to section 132D-10 if the proposed cultural use is to occur at any time other than during the periods prescribed in paragraph (1)[.];

provided that the purchase of not more than 5,000 individual non-aerial common fireworks commonly known as firecrackers shall be allowed under each permit.”

SECTION 6. Section 132D-4, Hawaii Revised Statutes, is amended to read as follows:

“[[§132D-4]] Permissible uses of special fireworks and aerial common fireworks. Special fireworks and aerial common fireworks may be purchased, set off, ignited, or otherwise caused to explode in the State only if for public display and permitted in writing pursuant to [section] sections 132D-10[.] and 132D-16.”

SECTION 7. Section 132D-7, Hawaii Revised Statutes, is amended to read as follows:

“[[§132D-7]] License or permit required. [(a) It shall be unlawful for any person to import any fireworks into the State, to] A person shall not:

- (1) Import, store, offer to sell, or sell, at wholesale or retail, [any] aerial common fireworks, special fireworks, or non-aerial common fireworks, unless the person has a valid license issued by the [department.] county;

- (2) Possess aerial common fireworks or special fireworks without a valid license to import, store, or sell aerial common fireworks or special fireworks, or a valid permit as provided for in this chapter; or
- (b) It shall be unlawful for any person to set off, ignite or discharge aerial common or special fireworks at any time or to set off, ignite or discharge]
- (3) Purchase non-aerial common fireworks [at any time other than the periods] with a permit under section 132D-10 more than five calendar days before the applicable time period for use prescribed in section 132D-3(1) in [any] the county [unless the person has a valid permit issued by the county in which the permitted activity is to occur.] that issued the permit.”

SECTION 8. Section 132D-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§132D-8]]~~ **Application for license.** (a) [The license] All licenses required under section 132D-7 shall be issued by the [department] county and shall be nontransferable. [The license] Licenses to import shall specify the date of issuance or effect and the date of expiration, which shall be March 31 of each year. The application shall be made on a form setting forth the date upon which the importations are to begin, the address of the location of the importer, and the name of the proprietor or, if a partnership, the name of the partnership and the names of all partners or, if a corporation, the name of the corporation and the names of its officers. If the state fire council or county discovers at a later date that a licensee has been convicted of a felony under this chapter, the licensee’s license shall be revoked and no new license shall be issued to the licensee for two years.

(b) Each storage, wholesaling, and retailing site shall be required to obtain a separate license. The license shall specify the date of issuance or effect and the date of expiration, which shall be March 31 of each year. The application shall be made on a form setting forth the date upon which the storage, sale, or offers for sale are to begin, the address of the location of the licensee, and the name of the proprietor, or, if a partnership, the name of the partnership and the names of all partners or, if a corporation, the name of the corporation and the name of its officers. Any license issued pursuant to this chapter may be revoked by the [department] county if the licensee violates any provision of this chapter or if the licensee stores or handles the fireworks in such a manner as to present an unreasonable safety hazard.

(c) It shall be unlawful for any person, other than a wholesaler who is selling or transferring fireworks to a licensed retailer, to sell or offer to sell any fireworks[:

- (1) More than seven calendar days prior to the designated period for use as described in section 132D-3(1);
- (2) At other than the designated periods for use set forth in section 132D-3(1), unless the purchaser presents a valid permit; or
- (3) At] at any [other] time[, and whenever the sale of special fireworks is involved,] to any person who does not present a permit duly issued as required by section [132D-7.] 132D-10 or 132D-16. The permit shall be signed by the seller or transferor at the time of sale or transfer of the fireworks, and the seller or transferor shall indicate on the permit the amount and type of fireworks sold or transferred. No person shall sell or deliver fireworks to any permittee in any amount in excess of the amount specified in the permit, less the amount shown on the permit previously to have been purchased[.]; provided that no fireworks shall be sold to a permittee holding a permit issued for purposes of section 132D-3, more than five calendar days before the applicable time period under section 132D-3.

(d) Aerial common fireworks, special fireworks, or both, shall only be sold or transferred by a wholesaler to a person with a valid permit under sections 132D-10 and 132D-16. No person with a valid permit under sections 132D-10 and 132D-16 shall sell or transfer aerial common fireworks, or special fireworks, or both, to any other person.

[(d)] (e) Any license issued pursuant to this chapter shall be prominently displayed in public view at each licensed location.”

SECTION 9. Section 132D-9, Hawaii Revised Statutes, is amended to read as follows:

“**§132D-9² Application for permit.** The permit required under section [132D-7] 132D-10 or 132D-16 shall be issued by the county [fire department] and be nontransferable. The county shall issue all permits for which complete applications have been submitted and which contain only correct information. The permit shall specify the date of issuance or effect and the date of expiration but in no case for a period to exceed one year. The permit for the purchase of non-aerial common fireworks for the purposes of section 132D-3 shall not allow purchase for more than one event as set forth in section 132D-3. The application shall be made on a form setting forth the dates for which the permit shall be valid, the location where the permitted activity is to occur, and the name of the proprietor or, if a partnership, the name of the partnership and the names of all partners or, if a corporation, the name of the corporation and the names of its officers. The permit application may be denied if the proposed use of fireworks presents a substantial inconvenience to the public or presents an unreasonable fire or safety hazard. Any permit issued pursuant to this chapter shall be prominently displayed in public view at the site.”

SECTION 10. Section 132D-10, Hawaii Revised Statutes, is amended to read as follows:

“**[[§132D-10]] Permits.** A permit shall be required for the purchase[, setting off, ignition, or discharge] of:

- (1) Any non-aerial common fireworks [when the proposed date of the use of the fireworks is not within the periods prescribed in section 132D-3(1); and] commonly known as firecrackers upon payment of a fee of \$25; and
- (2) Any aerial common fireworks and any special fireworks [under all circumstances and at any time.] for the purposes of section 132D-16.”

SECTION 11. Section 132D-11, Hawaii Revised Statutes, is amended to read as follows:

“**[[§132D-11]] Fee.** (a) The fee for the license required under section 132D-7 shall [not exceed \$110] be \$3,000 for importers, \$2,000 for each wholesaler’s site, \$1,000 for each storage site, and \$500 for each retailer’s site, and \$110 for permits for public display under section 132D-16 for each year or fraction of a year in which the licensee plans to conduct business and shall be payable to the [department.] county. The license fees shall be used by each county fire department to pay the salary of an auditor of fireworks records. The auditor shall monitor strict inventory and recordkeeping requirements to ensure that sales of fireworks are made only to license or permit holders under this chapter. The county shall provide an exemption from the fees under this section to nonprofit community groups for importation and storage of fireworks for displays once a year.

(b) The fee for the [permit] license required under section 132D-7 shall be [no greater than \$25] the fee specified in subsection (a) for each year [or], fraction of a year, or event in which the [permittee] licensee plans to conduct business and shall be payable to the county in which the permitted activity is to occur.”

SECTION 12. Section 132D-14, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§132D-14]]~~ **Penalty.** (a) [Any person importing aerial common fireworks or special fireworks into the State without first having obtained a license as required by section 132D-7 shall be guilty of a class C felony.] Any person:

- (1) Importing aerial common fireworks or special fireworks without having a valid license under section 132D-7 shall be guilty of a class C felony;
- (2) Purchasing, possessing, setting off, igniting, or discharging aerial common fireworks or special fireworks without a valid permit under sections 132D-10 and 132D-16, or storing, selling, or possessing aerial common fireworks or special fireworks without a valid license under section 132D-7:
 - (A) If the total weight of the aerial common fireworks or special fireworks is twenty-five pounds or more, shall be guilty of a class C felony; or
 - (B) If the total weight of the aerial common fireworks or special fireworks is less than twenty-five pounds, shall be guilty of a misdemeanor.
- (3) Who transfers or sells aerial common fireworks or special fireworks to a person who does not have a valid permit under sections 132D-10 and 132D-16, shall be guilty of a class C felony; and
- (4) Who removes or extracts the pyrotechnic contents from any fireworks and uses the contents to construct fireworks or a fireworks related device shall be guilty of a misdemeanor.

(b) Except as provided in subsection (a)[,] or as otherwise specifically provided for in this chapter, any person violating any other provision of this chapter, shall be [guilty of a petty misdemeanor.] fined not more than \$2,000 for each violation.

(c) The court shall collect the fines imposed in subsections (a) and (b) for violating this chapter and of the fines collected shall pay twenty per cent to the State and eighty per cent to the county in which the fine was imposed which shall be expended by the county for law enforcement purposes.”

SECTION 13. Section 132D-16, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§132D-16]]~~ **Permit for public display.** (a) Any person desiring to set off, ignite, or discharge aerial common fireworks, special fireworks, or both, for a public display shall apply to, and obtain a permit as required by section [132D-7,] 132D-10, from the county not less than twenty days before the date of the display.

- (b) The application shall state, among other things:
- (1) The name, age, and address of the applicant;
 - (2) The name, age, and address of the person who will operate the display, and verification that the person is a licensed pyrotechnic operator;
 - (3) The time, date, and place of the display;
 - (4) The type and quantity of aerial common fireworks, special fireworks, or both, to be displayed; and

(5) The purpose or occasion for which the display is to be presented.

(c) No permit shall be issued under this section unless the applicant presents, at the applicant's option, either:

- (1) A written certificate of an insurance carrier, which has been issued to or for the benefit of the applicant, or a policy providing for the payment of damages in the amount of not less than \$5,000 for injury to, or death of, any one person, and subject to the foregoing limitation for one person; in the amount of not less than \$10,000 for injury to, or death of, two or more persons; and in the amount of not less than \$5,000 for damage to property, caused by reason of the authorized display and arising from any tortious acts or negligence of the permittee, the permittee's agents, employees, or subcontractors. The certificate shall state that the policy is in full force and effect and will continue to be in full force and effect for not less than ten days after the date of the public display; or
- (2) The bond of a surety company duly authorized to transact business within the State, or a bond with not less than two individual sureties who together have assets in the State equal in value to not less than twice the amount of the bond, or a deposit of cash, in the amount of not less than \$10,000 conditioned upon the payment of all damages that may be caused to any person or property by reason of the authorized display and arising from any tortious acts or negligence of the permittee, the permittee's agents, employees, or subcontractors. The security shall continue to be in full force and effect for not less than ten days after the date of the public display.

The county may require coverage in amounts greater than the minimum amounts set forth in paragraph (1) or (2) if deemed necessary or desirable in consideration of such factors as the location and scale of the display, the type of aerial common fireworks, special fireworks, or both, to be used, and the number of spectators expected.

(d) The county, pursuant to duly adopted rules, shall issue the permit after being satisfied that the requirements of subsection (c) have been met, the display will be handled by a pyrotechnic operator duly licensed by the State, the display will not be hazardous to property, and the display will not endanger human life. The permit shall authorize the holder to display aerial common fireworks, special fireworks, or both, only at the place and during the time set forth therein, and to acquire and possess the specified aerial common fireworks, special fireworks, or both, between the date of the issuance of the permit and the time during which the display of those aerial common fireworks, special fireworks, or both, is authorized."

SECTION 14. Section 132D-17, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§132D-17]]~~ **Preemption.** (a) It is the intent of the legislature to occupy the entire field of regulation in all matters that are the subject of this chapter.

(b) **Inconsistent county ordinances, rules.** Notwithstanding any other law to the contrary, no county shall enact [any] ordinances or adopt any rules[,] regulating fireworks, except as required in [section 132D-7 regulating fireworks. All] this chapter, that is inconsistent with or more restrictive than, the provisions of this chapter. Any ordinances and rules regulating fireworks[,] that were enacted or adopted by a county before March 31, 1995, except those provisions which are not inconsistent with, or more restrictive than those of this chapter, are declared [null and] void.”

SECTION 15. Section 132D-20, Hawaii Revised Statutes, is amended to read as follows:

“[[§132D-20]] **Enforcement.** This chapter shall be enforced by [the department and designated] each county [agencies]. The counties are authorized to enforce and administer the provisions of this chapter [regulating permits for display, agricultural uses, uses by commercial establishments and wholesale and retail sales of fireworks].”

SECTION 16. Section 132D-2, Hawaii Revised Statutes, is amended by deleting the definition of “department”.

[““Department” means the state fire council.”]

SECTION 17. Section 132D-19, Hawaii Revised Statutes, is repealed.

SECTION 18. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 20. This Act shall take effect on July 6, 2000.

(Approved June 15, 2000.)

Notes

1. “132D-2” substituted for “132D-1.”
2. So in original.
3. Edited pursuant to HRS §23G-16.5.