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## A BILL FOR AN ACT

RELATING TO FIREWORKS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 132D, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4                               "PART    .    NUISANCE ABATEMENT

5           §132D-A Nuisance. Every building, premises, or place used  
6 for the purpose of violating this chapter and every building,  
7 premises, or place, in or upon which the violations are held or  
8 occurred shall be enjoined, abated, and prevented, regardless of  
9 whether it is a public or private nuisance.

10           §132D-B Citizen's rights. Any citizen who brings a  
11 nuisance abatement suit against a place used for the purpose of  
12 violating this chapter or who files a complaint with the local  
13 police or the department of the attorney general shall be  
14 entitled to the same rights and protections of victims and  
15 witnesses in criminal proceedings in accordance with chapter  
16 801D.

17           §132D-C Injunctions against persons. Nothing in this  
18 chapter shall be construed to prohibit injunctions against



1 persons causing, maintaining, aiding, abetting, or permitting a  
2 nuisance from entering or residing in any public or private  
3 building, premises, or place, in or upon which the nuisance  
4 exists.

5 §132D-D Suit to abate. (a) Whenever there is reason to  
6 believe that a nuisance as defined in this chapter is in  
7 existence, kept, or maintained in any county, the attorney  
8 general of the State or the prosecutor or prosecuting attorney  
9 of the respective counties shall, or any citizen of the State  
10 residing within such county may in the citizen's own name, or  
11 any organization, including but not limited to a tenant  
12 organization within such county may in the organization's own  
13 name, maintain a suit to abate and prevent the nuisance and to  
14 perpetually enjoin the person or persons causing, maintaining,  
15 aiding, abetting, or permitting the nuisance, or the owner,  
16 lessee, or agent of the building, premises, or place, in or upon  
17 which the nuisance exists from directly or indirectly causing,  
18 maintaining, aiding, abetting, or permitting the nuisance.

19 (b) No action authorized under this chapter which seeks to  
20 abate or prevent a nuisance shall be filed or maintained against  
21 the State or any political subdivision thereof.



1           §132D-E Standard of proof. Except as may be otherwise  
2 expressly provided, the civil causes of action in this part  
3 shall be proved by a preponderance of the evidence.

4           §132D-F Protective order. If proof of the existence of  
5 the nuisance depends, in whole or in part, upon the affidavits  
6 or testimony of witnesses who are not law enforcement officers,  
7 the court, upon a showing of prior threats of violence or acts  
8 of violence by any defendant may issue orders to protect those  
9 witnesses, including the nondisclosure of the name, address, or  
10 any other information that may identify those witnesses.

11          §132D-G Temporary writ. Whenever the existence of a  
12 nuisance is shown in a suit brought under this part to the  
13 satisfaction of the court or the judge thereof, either by  
14 verified petition or affidavit, or both, the court or judge  
15 thereof shall allow a temporary writ of injunction to abate and  
16 prevent the continuance or recurrence of such nuisance, which  
17 injunction may include a provision prohibiting the person or  
18 persons causing, maintaining, aiding, abetting, or permitting  
19 the nuisance from residing in or entering into the building,  
20 premises, or place, in or upon which the nuisance exists. The  
21 petition in such suit need not be verified, except in those  
22 suits brought by a citizen in the citizen's own name, or those



1 suits brought by an organization in its own name, but shall be  
2 signed by the party bringing the same and shall include a  
3 certification that the complainant believes the allegations of  
4 the petition to be true.

5       §132D-H Suit to have precedence. The suit when brought  
6 shall have precedence over all cases, excepting criminal  
7 proceedings, election contests, and hearings on injunctions, and  
8 in the suit evidence of the general reputation of the building,  
9 premises, place, or persons, and of the use of threat of  
10 violence shall be admissible for the purpose of proving the  
11 existence of the nuisance.

12       §132D-I Failure to prosecute. If the petition is filed by  
13 a citizen or by an organization, it shall not be dismissed by  
14 the complainant or for want of prosecution except upon a sworn  
15 statement by the complainant or the complainant's attorney,  
16 setting forth the reasons why the suit should be dismissed, and  
17 the dismissal ordered by the court. In case of failure to  
18 prosecute any such suit with reasonable diligence, or at the  
19 request of the complainant, the court, in its discretion, may  
20 substitute any other citizen or organization, including the  
21 attorney general or the prosecutor or prosecuting attorney of  
22 the county consenting thereto for the complainant. If a suit is



1 brought by a citizen or by an organization and the court finds  
2 that there was no reasonable ground or cause therefor, the costs  
3 shall be taxed against such citizen or organization, except that  
4 no costs shall be taxed against state or county organizations.

5       §132D-J Order of abatement. If the existence of a  
6 nuisance is established in a suit as provided herein, an order  
7 of abatement shall be entered as a part of the judgment in the  
8 case, which order shall include a provision permanently  
9 prohibiting the person or person causing, maintaining, aiding,  
10 abetting, or permitting the nuisance, if said person or persons  
11 are a party to the proceeding, from residing in or entering into  
12 the building, premises, or place, in or upon which the nuisance  
13 exists. In the event that the court determines that an  
14 injunction against the person or persons causing, maintaining,  
15 aiding, abetting, or permitting the nuisance will not completely  
16 abate the nuisance or that one or more of the persons causing,  
17 maintaining, aiding, abetting, or permitting the nuisance are  
18 not parties to the proceeding, the court shall also direct the  
19 effectual closing of the building, premises, or place, against  
20 its use for any purpose, and that it be kept closed for a period  
21 not exceeding one year. While the order remains in effect as to  
22 closing, the building, premises, or place, shall remain in the



1 custody of the court. The court's orders may also include, but  
2 are not limited to, an order suspending or revoking any  
3 business, professional, operational, or liquor license.

4       **§132D-K Costs and expenses.** For any attorney's fees,  
5 costs, or expenses incurred in the closing of the building,  
6 premises, or place, and keeping it closed, or incurred in  
7 enforcing the injunction prohibiting the person or persons  
8 causing, maintaining, aiding, abetting, or permitting the  
9 nuisance from residing or entering into the building, premises,  
10 or place, in or upon which the nuisance exists, as well as the  
11 attorney's fees, costs, and expenses incurred by the party  
12 bringing the action, a reasonable sum shall be allowed by the  
13 court.

14       **§132D-L Owner not guilty of contempt; may pay costs.** If  
15 the owner of the building, premises, or place, has not been  
16 guilty of any criminal contempt of court in the proceedings, and  
17 appears and pays all costs, fees, and allowances which are a  
18 lien on the building, premises, or place, and files a bond in a  
19 reasonable amount to be fixed by the court, with sureties, to be  
20 approved by the court or judge, conditioned that the owner will  
21 immediately abate any such nuisance that may exist at such  
22 building, premises, or place, and prevent the same from being



1 established or kept threat for a period of one year thereafter,  
2 the court or the judge thereof may, if satisfied of the owner's  
3 good faith, order the building, premises, or place, closed under  
4 the order of abatement cancelled so far as the same may relate  
5 to the closing of said building, premises, or place. The  
6 release of the building, premises, or place, under the provision  
7 of this section does not release it from any judgment, lien,  
8 penalty, or liability to which it may be subject by law.

9       **§132D-M Contempt.** Any person who knowingly violates any  
10 order issued pursuant to this part shall be subject to civil  
11 contempt as well as punishment for criminal contempt of court.  
12 Nothing in this section shall be construed in any way to  
13 preclude or preempt a criminal prosecution for violation of this  
14 chapter.

15       **§132D-N Fine, costs, lien on place.** Any attorney's fees,  
16 costs, expenses, and fines, imposed against any owner of a  
17 business, premises, or place, in any proceedings under this part  
18 shall be a lien upon such business, premises, or place, to the  
19 extent of the interest of such person therein, enforceable and  
20 collectible by execution issued by the order of the court.

21       **§132D-O Termination of lease.** The notice by the owner of  
22 any business, premises, or place, to the lessee, that the lease



1 will be revoked if the lessee continues the maintenance of the  
2 nuisance, and other action taken to revoke the lease or to  
3 obtain the termination of the nuisance shall be given  
4 appropriate consideration by the court in the determination of a  
5 criminal contempt action brought against the owner in connection  
6 with abatement procedures of this part.

7 §132D-P Place. "Place" as used in this part means any  
8 building, structure, or place, or any separate part or portion  
9 thereof, whether permanent or not, or the ground itself."

10 SECTION 2. Section 712A-4, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "§712A-4 Covered offenses. Offenses for which property is  
13 subject to forfeiture under this chapter are:

- 14 (a) All offenses which specifically authorize forfeiture;  
15 (b) Murder, kidnapping, gambling, criminal property  
16 damage, robbery, bribery, extortion, theft,  
17 unauthorized entry into motor vehicle, burglary, money  
18 laundering, trademark counterfeiting, insurance fraud,  
19 promoting a dangerous, harmful, or detrimental drug,  
20 commercial promotion of marijuana, unlawful  
21 methamphetamine trafficking, manufacturing of a  
22 controlled substance with a child present, promoting





1 child abuse, or electronic enticement of a child,  
2 which is chargeable as a felony offense under state  
3 law;

4 (c) The manufacture, sale, or distribution of a controlled  
5 substance in violation of chapter 329, promoting  
6 detrimental drugs or intoxicating compounds, promoting  
7 pornography, promoting pornography for minors, [~~e~~]  
8 promoting prostitution, or any violation of chapter  
9 132D, which is chargeable as a felony or misdemeanor  
10 offense, but not as a petty misdemeanor, under state  
11 law; and

12 (d) The attempt, conspiracy, solicitation, coercion, or  
13 intimidation of another to commit any offense for  
14 which property is subject to forfeiture."

15 SECTION 3. If any provision of this Act, or the  
16 application thereof to any person or circumstance is held  
17 invalid, the invalidity does not affect other provisions or  
18 applications of the Act which can be given effect without the  
19 invalid provision or application, and to this end the provisions  
20 of this Act are severable.



# H.B. NO. 1987

1 SECTION 4. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

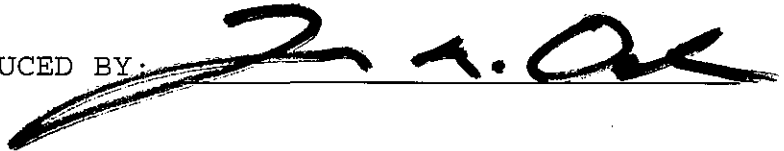
4 SECTION 5. In codifying the new sections added by section  
5 1 of this Act, the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

8 SECTION 6. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect upon its approval.

11

INTRODUCED BY:



JAN 19 2010



**Report Title:**

Nuisance Abatement; Illegal Fireworks

**Description:**

Establishes a cause of action to abate the illegal purchasing, selling, possession, setting off, igniting or discharging of fireworks. Allows the court to order the closure of any place used in violation of the fireworks law. Allows for the forfeiture of property used in violation of the fireworks law.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

