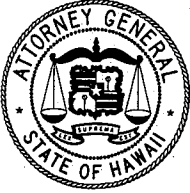


LATE TESTIMONY



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2010

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

DATE: Thursday, March 11, 2010 **TIME:** 1:25 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Lance Goto, Deputy Attorney General

Chair Espero 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.

Section 1 of this bill provides for the forfeiture of property related to violations of section 132D-14(a)(1) and (3), Hawaii Revised Statutes, of the fireworks law. We believe the language is vague, and we recommend that it be amended to read as follows, if this bill is passed:

"§712- Forfeiture. In addition to any other penalty that may be imposed for violations of section 132D-14(a)(1) and (3), any property used or intended for use in the commission of, attempt to commit, or conspiracy to commit an offense under section 132D-14(a)(1) and (3), or that facilitated or assisted such activity, and any proceeds or other property acquired or maintained with such proceeds from violations of section 132D-14(a)(1) and (3) may be subject to forfeiture pursuant to chapter 712A."

This bill also 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.