



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 2185, RELATING TO FIREWORKS.

BEFORE THE:

SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION
AND ON GOVERNMENT OPERATIONS

DATE: Wednesday, February 9, 2022 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 229, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Tammy Kaneshiro, Deputy Attorney General

Chairs Baker and Moriwaki and Members of the Committees:

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

The bill imposes a consumer fireworks tax at the wholesale and retail levels. The bill also requires each county fire department's "auditor of fireworks and articles pyrotechnic records" to submit an annual report detailing inventory, recordkeeping, and sales of fireworks to license or permit holders to the Legislature.

The bill provides that an unstated percentage of the remittances of taxes be set aside in a separate account to be drawn upon, without appropriation by the Legislature, by the Department of the Attorney General and the Department of Taxation for the implementation and enforcement of the consumer fireworks tax. (Page 2, line 19, through page 3, line 2.)

The provision that a portion of the taxes imposed by this bill may be expended without appropriation by the Legislature on page 2, lines 17-21, may violate article VII, section 5, of the Hawaii State Constitution, which provides that "[n]o public money shall be expended except pursuant to appropriations made by law." The taxes imposed by this bill are public moneys which should be appropriated by the Legislature in order to be expended.

While it may be possible to expend public monies without an appropriation if held in a separate trust fund under section 37-40, Hawaii Revised Statutes ("HRS"), it does not appear that the separate account contemplated under this bill would meet the definition of a trust fund. A trust fund is defined in section 37-62, Hawaii Revised Statutes (HRS), as "a fund in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes." The proposed wording of the bill does not appear to meet the requirements of a trust fund, because there is no person or class of person identified with a "vested beneficial interest or equitable ownership" in the moneys in the fund, and the fund may more appropriately be designated a special fund. Accordingly, the separate account to be created under this bill does not appear to meet the requirements of section 37-40, HRS, for the ability to expend public moneys without an appropriation.

A possible solution would be to establish a special fund, into which a certain percentage of the consumer fireworks tax revenues, as specified by the Legislature, would be deposited with an appropriation to the Department of the Attorney General and the Department of Taxation to expend moneys out of the special fund for the implementation and enforcement of the consumer fireworks tax.

If the bill is amended to establish a special fund, additional amendments may be needed to meet the requirements of a special fund. (See, e.g., page 52 of the Hawaii Legislative Drafting Manual, 10th edition, 2012.) Those amendments may include setting out what sources of funds are to be earmarked for the fund, describing what is to happen to unexpended and unencumbered moneys in the fund at the close of each fiscal year, establishing any minimum or maximum limits and what happens when the special fund balance is outside those limits, as well as any other conditions on the use of the funds. (See *also*, section 37-52.3, HRS, that sets out the criteria for the establishment and continuance of special funds.)

Thank you for the opportunity to offer these comments.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

ISAAC W. CHOY
DIRECTOR OF TAXATION

To: The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
and Members of the Senate Committee on Commerce and Consumer Protection

The Honorable Sharon Y. Moriwaki, Chair
The Honorable Donovan M. Dela Cruz, Vice Chair
and Members of the Senate Committee on Government Operations

From: Isaac W. Choy, Director
Department of Taxation

Date: Wednesday, February 9, 2022
Time: 9:30 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 2185, Relating to Fireworks

The Department of Taxation (Department) offers the following comments regarding S.B. 2185 for your consideration.

S.B. 2185 adds a new section to chapter 237, Hawaii Revised Statutes (HRS), levying a new tax against the gross proceeds of sales by retailers and wholesalers of consumer fireworks. The proposed amount of tax is to be equal to the value of the consumer fireworks multiplied by ten per cent. Further, an unspecified percentage of this tax is to be set aside for the Department of the Attorney General and the Department of Taxation for implementation and enforcement of this section. The measure takes effect on July 1, 2022.

First, the Department notes that this ten percent consumer fireworks tax is applicable at the retail and wholesale levels. As such there is no need for a distinction between retailers and wholesalers. The Department suggests amending subsection (a) to match the language of subsection (b).

Second, the Department notes that although this new tax is codified together with general excise tax (GET) law it would need to be administered as a new and separate tax as the allocation of the revenue is not strictly to the general fund like GET. Thus, the Department respectfully requests that the following provision be inserted to ease administration:

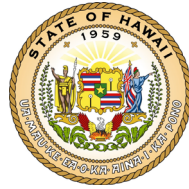
The filing of returns and payment of tax due under this section shall be in the form that the department prescribes. The department may require electronic filing of returns and payment of taxes.

Finally, the Department respectfully requests that any changes to the GET be made effective on January 1, 2023. This will allow sufficient time to make the necessary form and computer system modifications.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR



ANNE E. PERREIRA-EUSTAQUIO
DIRECTOR

JOANN A. VIDINHAR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 7, 2022

The Honorable Rosalyn Baker, Chair
Committee on Commerce and
Consumer Protection
The State Senate
State Capitol, Room 230
Honolulu, Hawaii 96813

The Honorable Sharon Moriwaki, Chair
Committee on Government Operations
The State Senate
State Capitol, Room 223
Honolulu, Hawaii 96813

Dear Chairs Baker and Moriwaki:

Subject: Senate Bill (SB) 2185 Relating to Fireworks

I am Steven Goble, Chair of the Hawaii State Fire Council (SFC). The SFC supports SB 2185, which imposes a consumer fireworks tax at the wholesale and retail levels. It also requires the auditor of fireworks and articles pyrotechnic records of each county fire department to submit an annual report detailing inventory, recordkeeping, and sales of fireworks to license or permit holders to the Legislature.

There is a general sense that the use of illegal fireworks and improvised explosive devices have substantially increased in recent years. A search of youtube.com using the term "aerial fireworks Hawaii New Years" reveals pervasive use of illegal aerial fireworks in many neighborhoods. As a consequence, serious injuries, property damage, and fatalities have occurred.

The illegal fireworks task force established by Act 170, Session Laws of Hawaii 2010, recommended that the legislature consider increasing fireworks permit fees to deter the use of illegal fireworks. The consumer fireworks tax proposed by SB 2185 indirectly increases fireworks permit fees to accomplish that goal. The SFC envisions the consumer fireworks tax will also discourage the use of fireworks by consumers. The general welfare, public safety, and property protection are priorities for the SFC and we respectfully request your committee's passage of SB 2185.

The Honorable Rosalyn Baker, Chair
The Honorable Sharon Moriwaki, Chair
Page 2
February 7, 2022

Should you have questions, please contact SFC Administrative Specialist Gary Lum at 723-7169 or glum@honolulu.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Goble', with a long horizontal flourish extending to the right.

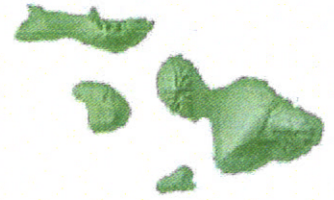
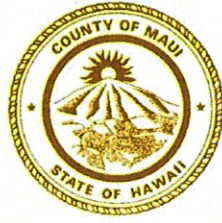
STEVEN GOBLE
Chair

SG/GL

MICHAEL P. VICTORINO
Mayor

BRADFORD K. VENTURA
Fire Chief

GAVIN L.M. FUJIOKA
Deputy Fire Chief



DEPARTMENT OF FIRE & PUBLIC SAFETY

COUNTY OF MAUI
200 DAIRY ROAD
KAHULUI, HI 96732

February 7, 2022

The Honorable Rosalyn Baker, Chair
Committee on Commerce and
Consumer Protection
The State Senate
State Capitol, Room 230
Honolulu, Hawaii 96813

The Honorable Sharon Moriwaki, Chair
Committee on Government Operations
The State Senate
State Capitol, Room 223
Honolulu, Hawaii 96813

Dear Chairs Baker and Moriwaki:

SUBJECT: SENATE BILL (SB) 2185 RELATING TO FIREWORKS

I am Bradford Ventura, member of the Hawaii State Fire Council (SFC) and the Fire Chief of the Maui Fire Department (MFD). The SFC supports SB 2185, which imposes a consumer fireworks tax at the wholesale and retail levels. It also requires the auditor of fireworks and articles pyrotechnic records of each county fire department to submit an annual report detailing inventory, recordkeeping, and sales of fireworks to license or permit holders to the Legislature.

There is a general sense that the use of illegal fireworks and improvised explosive devices have substantially increased in recent years. A search of youtube.com using the term "aerial fireworks Hawaii New Years" reveals pervasive use of illegal aerial fireworks in many neighborhoods. As a consequence, serious injuries, property damage, and fatalities have occurred.

The illegal fireworks task force established by Act 170, Session Laws of Hawaii 2010, recommended that the legislature consider increasing fireworks permit fees to deter the use of illegal fireworks. The consumer fireworks tax proposed by SB 2185 indirectly increases fireworks permit fees to accomplish that goal. The SFC envisions the consumer fireworks tax will also discourage the use of

The Honorable Rosalyn Baker, Chair
The Honorable Sharon Moriwaki, Chair
Page 2
February 7, 2022

fireworks by consumers. The general welfare, public safety, and property protection are priorities for the SFC and we respectfully request your committee's passage of SB 2185.

If you have questions, please contact SFC Administrative Specialist Gary Lum at (808) 723-7169 or glum@honolulu.gov.

Sincerely,

A handwritten signature in blue ink that reads "Brad Ventura". The signature is written in a cursive style with a large initial "B".

BRADFORD K. VENTURA
Fire Chief

HONOLULU FIRE DEPARTMENT
CITY AND COUNTY OF HONOLULU

636 South Street
Honolulu, Hawaii 96813-5007
Phone: 808-723-7139 Fax: 808-723-7111 Internet: www.honolulu.gov/hfd

RICK BLANGIARDI
MAYOR



SHELDON K. HAO
FIRE CHIEF

JASON SAMALA
DEPUTY FIRE CHIEF

February 7, 2022

The Honorable Rosalyn Baker, Chair
Committee on Commerce and
Consumer Protection
The State Senate
State Capitol, Room 230
Honolulu, Hawaii 96813

The Honorable Sharon Moriwaki, Chair
Committee on Government Operations
The State Senate
State Capitol, Room 223
Honolulu, Hawaii 96813

Dear Chairs Baker and Moriwaki:

Subject: Senate Bill (SB) 2185 Relating to Fireworks

My name is Sheldon K. Hao, Fire Chief of the Honolulu Fire Department (HFD). The HFD supports SB 2185, which imposes a consumer fireworks tax at the wholesale and retail levels. It also requires the auditor of fireworks and articles pyrotechnic records of each county fire department to submit an annual report detailing inventory, recordkeeping, and fireworks sales to license or permit holders to the legislature.

A search of aerial fireworks in Hawaii via a major video-sharing website reveals pervasive use of illegal aerial fireworks in many neighborhoods thereby confirming the use of illegal fireworks and improvised explosive devices have substantially increased in recent years. As a consequence, serious injuries, property damage, and fatalities have occurred.

The illegal fireworks task force established by Act 170, Session Laws of Hawaii 2010, recommended the legislature consider increasing fireworks permit fees to deter the use of illegal fireworks. The consumer fireworks tax proposed by SB 2185 indirectly increases fireworks permit fees to accomplish that goal. The HFD envisions the consumer fireworks tax will also discourage the use of fireworks by consumers.



The Honorable Rosalyn Baker, Chair
The Honorable Sharon Moriwaki, Chair
Page 2
February 7, 2022

The general welfare, public safety, and property protection are priorities for the HFD, and we respectfully request your committees' passage of SB 2185.

Should you have questions, please contact Administrative Specialist Gary Lum at 808-723-7169 or glum@honolulu.gov.

Sincerely,

A handwritten signature in blue ink that reads "Sheldon K. HAO".

SHELDON K. HAO
Fire Chief

SKH/GL:cn



The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
Senate Committee on Commerce and Consumer Protection

The Honorable Sharon Y. Moriwaki, Chair
The Honorable Donovan M. Dela Cruz, Vice Chair
Senate Committee on Government Operations

RE: SB 2185 Relating to Fireworks – In Opposition
February 9, 2022; Via Videoconference; 9:30 A.M.

Aloha Chairs Baker and Moriwaki, and members of the Committees:

American Promotional Events, Inc. (APE) **opposes Section 1** of SB 2185, which imposes consumer fireworks tax equal to the value of the consumer fireworks.

We acknowledge more resources are needed to enforce the proliferation of illegal aerial fireworks; however, this bill places an increased burden on retailers and sellers of consumer fireworks which will needlessly be passed onto consumers.

In 2010, the Honolulu City Council banned nearly all consumer fireworks on Oahu. Legislation aimed at strengthening enforcement and penalties for the use of illegal aerial devices has not proved successful in stemming the tide.

The passage of this measure will only further drive consumers, that have been lawful in acquiring permits and purchasing reasonably priced and legal consumer fireworks, into a broader market beyond legally sold consumer fireworks. Instead, this bill will only drive consumers to the black market, which, you can imagine is only a friend-of-a-friend ask away.

Hawaii consumers are enamored with fireworks and have a long history of fireworks being an integral part our cultural and celebratory events.

Thank you for the opportunity to express our concerns.

AMERICAN PROMOTIONAL EVENTS, INC.
2120 MILWAUKEE WAY • TACOMA, WA 98421
TACOMA (253) 922-0800 • FAX (253) 830-2930
www.tntfireworks.com

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, New Wholesale and Retail Tax on Fireworks

BILL NUMBER: SB 2185

INTRODUCED BY: KIDANI, CHANG, DECOITE, GABBARD, LEE, MISALUCHA, WAKAI, Baker, Ihara, Keith-Agaran, Kim, Taniguchi

EXECUTIVE SUMMARY: Imposes a consumer fireworks tax at the wholesale and retail levels. Requires the Auditor to submit an annual report detailing inventory, recordkeeping, and sales of fireworks to license or permit holders to the Legislature.

SYNOPSIS: Adds a new section to chapter 237, HRS, imposing a new 10% tax on wholesale and retail sales of consumer fireworks. Consumer fireworks are as defined in section 132D-2, HRS.

The new tax is to be paid the same as other general excise taxes, except that the fireworks tax is to be paid quarterly and the return is due on the last day of the month following close of the quarter.

Provides that ___% of remittances under this section shall be set aside in a separate account to be drawn upon, without appropriation by the legislature, by the department of the attorney general and the department of taxation for implementation and enforcement of this tax; provided further that the department of the attorney general and the department of taxation shall coordinate implementation and enforcement so as to minimize duplication of services; provided further that the department of the attorney general and the department of taxation shall report to the legislature prior to the convening of each regular session on the expenses paid from the separate account in the year immediately preceding the report.

EFFECTIVE DATE: January 1, 2023.

STAFF COMMENTS:

New Tax: This bill would create a new “sin tax,” not unlike that now imposed on liquor and tobacco products. It is designed to affect social behavior by making the thing sought to be taxed much more expensive.

In practical terms, this tax needs to be added to chapter 238 as well as chapter 237 if it is going to work. As drafted, no tax is imposed when an end user or a retailer imports fireworks rather than buying it from a local business.

The problem with a sin tax can be seen with our experience with the tobacco tax. We put heavy taxes on tobacco products. We earmark the revenue for noble causes like the cancer center. Then more people stop smoking (which we thought was the goal), and the revenue from the sin

tax naturally drops. Then government officials went into conniptions because they need to do something about funding the cancer center.

Fiscal reliance on funds from a sin tax is inadvisable, perhaps outright dangerous. If the goal is to affect social behavior, use of the tax law is not the most effective way to do so.

New Special Account: In 2002, the Legislature set requirements for establishing and continuing special and revolving funds. Sections 37-52.3 and 37-52.4, HRS, now state that the criteria used to review special and revolving funds are the extent to which each fund:

- Serves a need, as demonstrated by the purpose of the program to be supported by the fund; the scope of the program, including financial information on fees to be charged, sources of projected revenue, and costs; and an explanation of why the program cannot be implemented successfully under the general fund appropriation process;
- Reflects a clear nexus between the benefits sought and charges made upon the program users or beneficiaries, or a clear link between the program and the sources of revenue—as opposed to serving primarily as a means to provide the program or users with an automatic means of support, removed from the normal budget and appropriation process;
- Provides an appropriate means of financing for the program or activity, that is used only when essential to the successful operation of the program or activity; and
- Demonstrates the capacity to be financially self-sustaining.

We are concerned that the new special fund clearly fails the second criterion and may fail other criteria as well. The establishment and intended use of the special fund as described subverts the appropriation process.

Digested: 2/6/2022



1050 Bishop St. PMB 235 | Honolulu, HI 96813
P: 808-533-1292 | e: info@hawaiiifood.com

Executive Officers

Charlie Gustafson, Tamura Super Market, *Chair*
Eddie Asato, Pint Size Hawaii, *Vice Chair*
Gary Okimoto, Safeway, *Secretary/Treas.*
Lauren Zirbel, HFIA, *Executive Director*
John Schliff, Rainbow Sales and Marketing, *Advisor*
Stan Brown, Acosta Sales & Marketing, *Advisor*
Paul Kosasa, ABC Stores, *Advisor*
Derek Kurisu, KTA Superstores, *Advisor*
Toby Taniguchi, KTA Superstores, *Advisor*
Joe Carter, Coca-Cola Bottling of Hawaii, *Immediate Past Chair*

TO:

Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Committee on Government Operation
Senator Sharon Y. Moriwaki, Chair
Senator Donovan M. Dela Cruz, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: February 9, 2022

TIME: 9:30am

PLACE: Via Videoconference

RE: SB2185 Relating to Fireworks

Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA is in opposition to this measure to impose a consumer fireworks tax at the wholesale and retail levels. Targeting the businesses that legally sell fireworks is unlikely to address either the issues of illegal fireworks displays or black market fireworks sales. We urge the legislature to hold this measure and seek solutions that are more likely to achieve positive results for the issues at hand. We thank you for the opportunity to testify.

SB-2185

Submitted on: 2/4/2022 9:31:10 PM

Testimony for CPN on 2/9/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Oppose	No

Comments:

The people are tired of Taxes. We are just gettig ripped off!!!

SB-2185

Submitted on: 2/4/2022 7:09:43 PM

Testimony for CPN on 2/9/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
lynne matusow	Individual	Comments	No

Comments:

This is all well and good, but you are not addressing all the illegal fireworks that come into the state. These must be found and taxed. Right now the providers are getting away scott free.