

A Bill for an Act Relating to Fireworks.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
FIREWORKS**

§ **-1 Title.** This chapter shall be known and may be cited as the “Fireworks Control Law”.

§ **-2 Definitions.** As used in this chapter unless the context requires otherwise:

“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 issued by a county. “Aerial common fireworks” include firework items commonly known as bottle rockets, sky rockets, missile-type rockets, helicopters, torpedoes, daygo bombs, roman candles, jumping jacks which move about the ground farther than inside a circle with a radius of 12 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.

“Common fireworks” means any firework designed primarily for retail sale to the public during prescribed dates and which produces visible or audible effects through combustion and which is 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.

“Department” means the State Fire Council.

“Fireworks” means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation and classified as common or special fireworks by the United States Bureau of Explosives or contained in the regulations of the United States Department of Transportation and designated as UN 0335 1.3G or UN 0336 1.4G. The term “fireworks” shall not include automotive safety flares, nor shall the term be construed to include toy pistols, toy cannons, toy guns, party poppers, pop-its or other devices which contain twenty-five hundredths of a grain or less of explosives substance. The term “fireworks” also shall not include any explosives and pyrotechnics regulated under chapter 396.

“License” means a nontransferable, formal authorization, valid for a period not to exceed one calendar year from the date of issuance and which the department is hereby authorized to issue under this chapter, to engage in the act or acts specifically designated herein.

“Non-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 remain on or near the ground and which, while stationary or spinning rapidly on or near the ground, emits smoke, a shower of colored sparks, whistling effects, flutter sparks or balls of colored sparks and combination items which contain one or more of these effects. "Non-aerial common fireworks" include firework items commonly known as firecrackers which are single paper cylinders not exceeding one and one-half inches in length excluding the fuse and one quarter of an inch in diameter containing a charge of not more than 50 milligrams of pyrotechnic composition, snakes, sparklers, fountains, and cylindrical or cone fountains which emit effects up to a height not greater than twelve feet above the ground, illuminating torches, bamboo canons, whistles, toy smoke devices, wheels, and ground spinners which when ignited remain within a circle with a radius of twelve feet as measured from the point where the item was placed and ignited, novelty or trick items, combination items, and other fireworks of like construction which are designed to produce the same or similar effects.

"Permit" means a nontransferable, formal authorization, valid for a period not to exceed one calendar year from the date of issuance and which a county is hereby authorized to issue under this chapter, to engage in the act or acts specifically designated herein.

"Pyrotechnic composition" or "pyrotechnic contents" means the combustible or explosive component of fireworks.

"Special fireworks" means any firework designed primarily for exhibition display by producing visible or audible effects and classified as special fireworks by the United States Bureau of Explosives or contained in the regulations of the United States Department of Transportation and designated as UN 0335 1.3G and which are prohibited for use by any person who does not have a display permit issued by a county.

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

§ -4 **Permissible uses of special and aerial common fireworks.** Special and aerial common fireworks may be purchased, set off, ignited, or otherwise caused to explode in the State only if permitted in writing pursuant to section -10.

§ -5 **General prohibitions.** It shall be unlawful for any person without a permit to:

- (1) Remove or extract the pyrotechnic contents from any fireworks;
- (2) Throw any ignited fireworks from a moving vehicle; or
- (3) Set off, ignite, discharge, or otherwise cause to explode any fireworks:
 - (A) At any time not within the periods for use prescribed in section -3, unless permitted pursuant to section -10;

- (B) Within one thousand feet from any operating hospital, convalescent home, home for the elderly, or animal hospital;
- (C) In any school building, or on any school grounds and yards without first obtaining authorization from appropriate school officials;
- (D) On any highway, alley, street, sidewalk, or other public way; in any park; within fifty feet from a canefield; or within one thousand feet from any building used for public worship during the periods when services are held; except as may be permitted pursuant to section -10; and
- (E) Within five hundred feet from any hotel.

§ **-6 Exceptions.** The prohibitions in section -5 do not apply to:

- (1) The use of flares, noisemakers, or signals for warning, pest control, or illumination purposes by police and fire departments, utility companies, transportation agencies, and other governmental or private agencies or persons, including agricultural operations, in connection with emergencies, their duties, or business; and
- (2) The sale or use of blank cartridges for a show or theater, or for signal, commercial, or institutional purposes in athletics or sports.

§ **-7 License or permit required.** (a) It shall be unlawful for any person to import any fireworks into the State, to store, offer to sell or sell, at wholesale or retail any fireworks, unless the person has a valid license issued by the department.

(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 non-aerial common fireworks at any time other than the periods for use prescribed in section -3(1) in any county unless the person has a valid permit issued by the county in which the permitted activity is to occur.

§ **-8 Application for license.** (a) The license required under section -7 shall be issued by the department and shall be nontransferable. 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 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.

(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 31st 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 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 -3(1);
- (2) At other than the designated periods for use set forth in section -3(1), unless the purchaser presents a valid permit; or
- (3) 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 -7. 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.

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

§ **-9 Application for permit.** (a)¹ The permit required under section -7 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 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.

§ **-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 -3(1); and
- (2) Any aerial common and any special fireworks under all circumstances and at any time.

§ **-11 Fee.** The fee for the license required under section -7 shall not exceed \$110 for each year or fraction of a year in which the licensee plans to conduct business and shall be payable to the department. The fee for the permit required under section -7 shall be no greater than \$25 for each year or fraction of a year in which the permittee plans to conduct business and shall be payable to the county in which the permitted activity is to occur.

§ **-12 Sale to minors.** It shall be unlawful for any person to offer for sale, sell, or give any fireworks to minors, and for any minor to possess, purchase, or set off, ignite, or otherwise cause to explode any fireworks, except as provided in section -13.

§ **-13 Liability of parents or guardians.** The parents, guardian, and other persons having the custody or control of any minor, who knowingly permit the minor to possess, purchase, or set off, ignite, or otherwise cause to explode

any fireworks, shall be deemed to be in violation of this chapter and shall be subject to the penalties thereunder, except that the parents or guardian may allow the minor to use fireworks while under the immediate supervision and control of the parent or guardian, or under the supervision and control of another adult.

§ **-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 -7 shall be guilty of a class C felony.

(b) Except as provided in subsection (a), any person violating any other provision of this chapter, shall be guilty of a petty misdemeanor.

§ **-15 Notice requirements.** Each licensed retail outlet shall post adequate notice that clearly cautions each person purchasing fireworks of the prohibitions, liabilities, and penalties incorporated in sections -12, -13, and -14.

§ **-16 Permit for public display.** (a) Any person desiring to set off, ignite, or discharge special fireworks for a public display shall apply to, and obtain a permit as required by section -7, 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 special fireworks 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 special fireworks 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 special fireworks only at the place and during the time set forth therein, and to acquire and possess the specified special fireworks between the date of the issuance of the permit and the time during which the display of those special fireworks is authorized.

§ **-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) Notwithstanding any other law to the contrary, no county shall enact any ordinances or adopt any rules, except as required in section -7 regulating fireworks. All ordinances and rules regulating fireworks, adopted by a county before the effective date of this section, are declared null and void.

§ **-18 Effect on other laws.** Nothing in this chapter shall be construed to apply to the possession, storage, sale, or use of explosives and combustibles in accordance with chapter 396.

§ **-19 Rules.** The department shall adopt rules pursuant to chapter 91 to carry out the purposes of this chapter, including, but not limited to different classes of licenses and permits for matters concerning special and common fireworks.

§ **-20 Enforcement.** This chapter shall be enforced by the department and designated 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 2. This Act shall take effect on March 31, 1995.

(Approved June 21, 1994.)

Note

1. No subsection (b) designation.