

## ACT 208

H.B. NO. 2193

A Bill for an Act Relating to Fireworks.

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

SECTION 1. Act 67, Session Laws of Hawaii 2023, created the illegal fireworks task force to, among other things, plan, coordinate, and engage in law enforcement operations to interdict illegal fireworks. The legislature finds that additional provisions are needed to enable county and state agencies to address the illegal use of fireworks in Hawaii.

The purpose of this Act is to amend the State's Fireworks Control Law to:

- (1) Authorize officers having police powers and every county fire department officer to enter and inspect the premises of a licensee or permittee for compliance with the Fireworks Control Law, and establish penalties for hindering an officer;
- (2) Establish procedures to authorize the department of law enforcement to conduct administrative inspections of controlled premises;
- (3) Require licensees and permittees who hold, store, transport, sell, possess, or otherwise dispose of fireworks or articles pyrotechnic to keep records and maintain inventories;
- (4) Require licensees and permittees to report to the director of law enforcement and appropriate county fire chief if they have reason to believe that fireworks or articles pyrotechnic were stolen, embezzled, or otherwise obtained by fraud or diversion;
- (5) Authorize law enforcement agencies and county fire departments to safely dispose of confiscated fireworks and articles pyrotechnic;
- (6) Require violators to be held liable for storage and disposal costs;
- (7) Specify that each type of prohibited firework constitutes a separate violation; and
- (8) Authorize the department of law enforcement, in addition to the counties, to enforce the Fireworks Control Law.

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

**“§132D- Entry onto premises; inspection of premises, books, and records; obstructing law enforcement or fire department operations; penalty.** (a) Any law enforcement or fire officer may, at reasonable hours, enter and inspect the premises of a licensee or permittee and any relevant books or records therein to verify compliance with this chapter and the conditions of the license or permit.

(b) Upon a request by any law enforcement or fire officer to enter and inspect the premises of a licensee or permittee at reasonable hours, the licensee, the permittee, or an employee of the licensee or permittee shall make available for immediate inspection and examination the premises and all relevant books and records therein.

(c) Any licensee or permittee who refuses the law enforcement or fire officer entry or access to the premises, books, or records shall be in violation of the conditions of the license or permit. After a hearing, the issuing department shall suspend or revoke the license or permit for refusing entry or access or for violations of any other requirement or condition of the license or permit or any provision of this chapter or rule adopted pursuant to this chapter. The issuing department shall provide the licensee or permittee with a written notice and order describing the basis for the suspension or revocation. Any person aggrieved by the suspension or revocation determination may request a contested case hearing pursuant to chapter 91. To request a contested case hearing, the person shall submit a written request to the issuing department within thirty calendar days of the date of the notice and order of the suspension or revocation. Appeal to the circuit court under section 91-14, or any other applicable statute, shall only be taken from the issuing department's final order pursuant to a contested case.

(d) Any licensee, permittee, employee of a licensee or permittee, or other person who:

- (1) Threatens with the use of violence, force, or physical interference or obstacle, or hinders, obstructs, or prevents any law enforcement or fire officer, or any person assisting a law enforcement or fire officer, from entering into the premises of the licensee or permittee; or
- (2) Opposes, obstructs, or molests a law enforcement or fire officer in the officer's enforcement of this chapter,

shall be guilty of a misdemeanor, punishable by a fine of no more than \$2,000 or imprisonment for no more than one year, or both.

(e) If any law enforcement or fire officer, having demanded admittance onto the premises of a licensee or permittee and declared the officer's name and office, is not admitted by the licensee, permittee, or person in charge of the premises, the officer may use force to enter the premises.

(f) For purposes of this section, "premises of a licensee or permittee" does not include the licensee's or permittee's private residence or a dwelling that is considered to be the person's home, including a single family house, apartment unit, condominium, townhouse, or cooperative unit.

**§132D- Administrative inspections; controlled premises.** (a) The director or the director's designee may conduct administrative inspections of controlled premises after presenting appropriate credentials to the licensee, permittee, other persons subject to this chapter, or their agents; provided that:

- (1) Inspections of controlled premises shall be at reasonable times, within reasonable limits, and conducted in a reasonable manner to verify compliance with this chapter and the conditions of the license or permit;
- (2) The director or the director's designee, without a warrant, shall have access to, and may copy, any records, books, logs, or documents relevant to the holding, storage, transportation, sale, possession, or disposition of fireworks or articles pyrotechnic regulated under this chapter;
- (3) The director or the director's designee may inventory the stock of any fireworks or articles pyrotechnic regulated under this chapter and se-

cure samples or specimens of any fireworks or articles pyrotechnic not seized as evidence by paying for the sample or specimen. The director or the director's designee shall make or cause to be made examinations of samples or specimens secured under this paragraph to verify compliance with this chapter or the conditions of the license or permit; and

- (4) The regulatory authority under this chapter shall remain with the county fire departments. The director or the director's designee conducting these inspections shall aid the county fire departments in enforcing the departments' regulatory authority.

(b) For purposes of this section, "controlled premises" means a place where any persons licensed or permitted under this chapter are required to keep records and authorized to hold, store, transport, sell, possess, or otherwise dispose of fireworks or articles pyrotechnic. "Controlled premises" includes factories, warehouses, establishments, businesses, storefronts, vehicles, and conveyances.

**§132D- Recordkeeping requirements.** (a) A person having a license or permit issued under this chapter to hold, store, transport, sell, possess, or otherwise dispose of fireworks or articles pyrotechnic shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of this chapter.

(b) Each licensee and permittee shall create and keep for five years a record of all fireworks or articles pyrotechnic received, imported, held, distributed, sold, possessed, or disposed of, in that year, including the amounts of fireworks or articles pyrotechnic received, imported, held, distributed, sold, possessed, or disposed.

(c) Records required under this section shall be maintained separately in a file, log book, or electronic database that is readily accessible by the licensee or permittee.

(d) All records pertaining to the receipt, importation, storage, distribution, sale, possession, and disposal of fireworks or articles pyrotechnic shall be produced and made available upon request by the director, county fire chiefs, or their designees.

**§132D- Mandatory reporting requirements.** (a) Notwithstanding any other law requiring confidentiality, a licensee or permittee who, in the licensee's or permittee's professional or official capacity, has reason to believe that fireworks or articles pyrotechnic in the licensee's or permittee's inventory have been stolen, embezzled, or otherwise obtained by fraud or diversion shall immediately make a verbal report of the matter to the director and county fire chief of the county in which the licensee or permittee resides or conducts business.

(b) The licensee or permittee shall submit a written report to the director and county fire chief of the county in which the licensee or permittee resides or conducts business as soon as practicable following the verbal report. The written report shall contain:

- (1) The name and address of the suspected perpetrator, if known;
- (2) The nature and extent of the theft, embezzlement, fraud, or diversion; and
- (3) Any other information that the licensee or permittee believes may be helpful or relevant to the investigation of the theft, embezzlement, fraud, or diversion.

(c) Upon demand of the director or county fire chief of the county in which the licensee or permittee resides or conducts business, any person subject

to subsection (a) shall provide all information related to the alleged incident of theft, embezzlement, fraud, or diversion, including records, reports, and any image, film, video, or other electronic medium, that was not included in the written report submitted pursuant to subsection (b).

(d) This section shall not be construed to provide a basis for a cause of action against the director, department of law enforcement, county fire chief, or county fire departments.

(e) Any person subject to this section who knowingly prevents another person from complying with the mandatory reporting requirements of this section or who knowingly fails to provide information as required by this section shall be guilty of a misdemeanor.

**§132D- Disposal of confiscated fireworks or articles pyrotechnic.**

Any law enforcement agency or county fire department that confiscates prohibited fireworks or articles pyrotechnic pursuant to this chapter may safely destroy or dispose of the confiscated fireworks or articles pyrotechnic; provided that the law enforcement agency or county fire department shall retain a sample or specimen of each type of confiscated firework or article pyrotechnic for evidentiary purposes.

**§132D- Storage and disposal fine.** (a) In any administrative, civil, or criminal action to enforce this chapter, after providing notice and an opportunity for hearing, the agency or a court hearing the action shall hold any party violating this chapter liable for the total amount of any costs incurred by the agency or agencies for the storage and disposal of confiscated or seized fireworks or articles pyrotechnic.

(b) An administrative or civil order to pay a storage and disposal fine may be collected in the same manner as a judgment in a civil action. An agency or agencies may collect the full amount of the storage and disposal fine together with any costs, interest, and attorney's fees incurred in any action to enforce the order to pay."

SECTION 3. Section 132D-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Director" means the director of law enforcement.

"Law enforcement or fire officer" means any law enforcement officer having police power or county fire department officer, including firefighters."

SECTION 4. Section 132D-8, Hawaii Revised Statutes, is amended to read as follows:

**§132D-8 Application for license.** (a) All licenses required under section 132D-7 shall be issued by the county and shall be nontransferable. 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. The application for a license to import display fireworks, articles pyrotechnic, or aerial devices shall include written documentation of the proposed display event and related contact information in a form prescribed by the applicable county. 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]~~ names of its officers. Any license issued pursuant to this chapter may be revoked by the 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]~~ that presents an unreasonable safety hazard.

(c) Permanent and temporary fireworks storage buildings or structures and buildings or facilities where redistribution activities are performed shall comply with the currently adopted county building or fire codes or the latest edition of nationally recognized standards.

(d) It shall be unlawful for any licensee, other than a wholesaler who is selling or transferring fireworks or articles pyrotechnic to a licensed retailer, to sell or offer to sell, exchange for consideration, give, transfer, or donate any fireworks or articles pyrotechnic at any time to any person who does not present a permit duly issued as required by section 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 or articles pyrotechnic, and the seller or transferor shall indicate on the permit the amount and type of fireworks or articles pyrotechnic 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 to have been previously 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.

(e) Aerial devices, display fireworks, or articles pyrotechnic 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 devices, display fireworks, or articles pyrotechnic to any other person.

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

(g) A licensee under this chapter shall be deemed to have consented to allow the director or the director's designee to inspect the premises of the licensee, except the licensee's private residence. If a licensee withdraws consent to inspect the premises of the licensee, the license shall be revoked."

SECTION 5. Section 132D-8.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department of law enforcement or fire department of a county, in which a shipment of fireworks or articles pyrotechnic 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 or articles pyrotechnic[;] or any facility in which fireworks or articles pyrotechnic are to be stored."

SECTION 6. Section 132D-9, Hawaii Revised Statutes, is amended to read as follows:

**"§132D-9 Application for permit.** (a) The permit required under section 132D-10 or 132D-16 shall be issued by the county or its authorized designees and shall be nontransferable. The county or its authorized designees shall issue

all permits for which complete applications have been submitted and ~~[which]~~ that 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 consumer 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 or articles pyrotechnic presents a substantial inconvenience to the public or presents an unreasonable fire or safety hazard.

(b) Any permit issued pursuant to this chapter shall be prominently displayed in public view at the site.

(c) A permittee under this chapter shall be deemed to have consented to allow the director or the director's designee to inspect the premises of the permittee, except the permittee's private residence. If a permittee withdraws consent to inspect the premises of the permittee, the permit shall be revoked."

SECTION 7. Section 132D-14, Hawaii Revised Statutes, is amended to read as follows:

**“§132D-14 Penalty.** (a) Any person:

- (1) Importing aerial devices, display fireworks, or articles pyrotechnic 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 devices, display fireworks, or articles pyrotechnic without a valid permit under sections 132D-10 and 132D-16, or storing, selling, or possessing aerial devices, display fireworks, or articles pyrotechnic without a valid license under section 132D-7, or allowing an individual to possess, set off, ignite, discharge, or otherwise cause to explode any aerial device in violation of section 132D-14.5:
  - (A) If the total weight of the aerial devices, display fireworks, or articles pyrotechnic is twenty-five pounds or more, shall be guilty of a class C felony; or
  - (B) If the total weight of the aerial devices, display fireworks, or articles pyrotechnic is less than twenty-five pounds, shall be guilty of a misdemeanor;
- (3) Who transfers or sells aerial devices, display fireworks, or articles pyrotechnic 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 or articles pyrotechnic and uses the contents to construct fireworks, articles pyrotechnic, or a fireworks or articles pyrotechnic 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 fined no more than \$5,000 for each violation. Notwithstanding any provision to the contrary in this section, any person violating section 132D-14.5 shall be fined at least \$500 and no more than \$5,000.

(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.

(d) Notwithstanding any penalty set forth herein, violations of subsection (a)(1) or (3) may be subject to nuisance abatement proceedings provided in part V of chapter 712.

(e) For the purposes of this section:

- (1) Each type of prohibited firework imported, purchased, sold, possessed, set off, ignited, or discharged shall constitute a separate violation for each unopened package; and
- (2) Each separate firework imported, purchased, sold, possessed, set off, ignited, or discharged shall be a separate violation if the package is opened or the firework is not in a package.

(f) For the purposes of this section, “package”:

- (1) Means any aerial device, display firework, or article pyrotechnic:
  - (A) Enclosed in a container or wrapped in any manner in advance of wholesale or retail sale; and
  - (B) With a weight or measure determined in advance of wholesale or retail sale; and
- (2) Does not mean:
  - (A) Inner wrappings not intended to be individually sold to the customer;
  - (B) Shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity;
  - (C) Auxiliary containers or outer wrappings used to deliver commodities if the containers or wrappings bear no printed matter pertaining to any particular aerial device, display firework, or article pyrotechnic;
  - (D) Containers used for retail tray pack displays when the container itself is not intended to be sold; or
  - (E) Open carriers and transparent wrappers or carriers for containers when the wrappers or carriers do not bear printed matter pertaining to any particular aerial devices, display fireworks, or articles pyrotechnic.”

SECTION 8. Section 132D-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall be enforced by the department of law enforcement or each county. The department of law enforcement and counties, or both, are authorized to enforce and administer the provisions of this chapter.”

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 11. This Act shall take effect on July 1, 2024.

(Approved July 5, 2024.)

#### Note

1. Edited pursuant to HRS §23G-16.5.