

JAN 18 2007

A BILL FOR AN ACT

RELATING TO OPEN CARRY LICENSE OF FIREARMS.

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

1 SECTION 1. Chapter 134, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§134- License to openly carry a firearm. (a) The
5 chiefs of police of the various counties shall issue licenses to
6 openly carry firearms to persons qualified as provided in this
7 section. These licenses shall be valid statewide for a period
8 of three years. Each license shall bear a color photograph of
9 the licensee. For the purposes of this section, "to openly
10 carry a firearm" means a firearm, that is a pistol or a
11 revolver, and that is holstered in such a manner that two to
12 three inches of the holster is visible and the holstered firearm
13 is not covered or enclosed so an observer cannot determine that
14 it is a handgun without removing it from that which covers or
15 encloses it or without opening, lifting, or removing that which
16 covers or encloses it; and the term does not include an assault
17 pistol or automatic firearm as defined in section 134-1. Any



1 person in compliance with the terms of the license may openly
2 carry a firearm. The licensee shall carry the license, together
3 with valid identification, at all times in which the licensee is
4 in actual possession of a firearm and shall display both the
5 license and proper identification upon demand by a law
6 enforcement officer. Violations of this subsection shall
7 constitute a petty misdemeanor, provided that the maximum term
8 of imprisonment shall be three days, and the maximum fine shall
9 be \$500.

10 (b) The appropriate chief of police shall issue a license
11 if the applicant:

- 12 (1) Is a citizen of the United States;
13 (2) Has resided in the State for at least six months or is
14 a member of, or spouse of a member of, the military
15 stationed in the State, or a retired law enforcement
16 officer;
17 (3) Is twenty-three years of age or older;
18 (4) Is not ineligible to possess a firearm pursuant to
19 section 134-7;
20 (5) Has demonstrated competence with a firearm by meeting
21 the training requirements of 134-2(g), to include
22 practical training in drawing and replacing a handgun



1 from and to a holster. A photocopy of an affidavit
2 from the certified instructor or standard government
3 form from the government agency providing said
4 training, attesting to the successful completion of
5 the training, shall constitute evidence of
6 qualification under this paragraph.

7 (6) Does not chronically and habitually use intoxicating
8 liquor or other substances to the extent that the
9 person's normal faculties are impaired. It shall be
10 presumed that an applicant chronically and habitually
11 uses intoxicating liquor or other substances to the
12 extent that the person's normal faculties are impaired
13 if the applicant:

14 (A) Has been committed under the substance abuse
15 provisions of chapter 334;

16 (B) Has been convicted of any offense relating to
17 dangerous, harmful, or detrimental drug,
18 intoxicating compound or liquor, or marijuana
19 under part IV of chapter 712;

20 (C) Has been deemed a habitual offender under section
21 291E-61.5; or



- 1 (D) Has had two or more convictions under section
- 2 291E-61, or similar laws of any other state,
- 3 within the three-year period immediately
- 4 preceding the date on which the application is
- 5 submitted;

- 6 (7) Desires a legal means to openly carry a firearm for
- 7 lawful purposes;

- 8 (8) Has not been adjudicated an incapacitated person as
- 9 defined under section 554B-1 or 560:5-102, or similar
- 10 laws of any other state, unless five years have
- 11 elapsed since the applicant's restoration to capacity
- 12 by court order;

- 13 (9) Has not been committed to a mental institution under
- 14 chapter 334, or similar laws of any other state,
- 15 unless the applicant produces a certificate from a
- 16 licensed psychiatrist that the applicant has not
- 17 suffered from disability for at least five years prior
- 18 to the date of submission of the application, and is
- 19 highly unlikely to relapse; and

- 20 (10) Has not had adjudication of guilt withheld or
- 21 imposition of sentence suspended on any felony, unless
- 22 three years have elapsed since probation or any other



1 conditions set by the court have been fulfilled, or
2 the record has been sealed or expunged.

3 (c) The appropriate chief of police may deny a license if
4 the applicant has been found guilty of one or more crimes of
5 violence constituting a misdemeanor, unless three years have
6 elapsed since probation or any other conditions set by the court
7 have been fulfilled, or the record has been sealed or expunged.
8 The chief of police may deny a license if the applicant has been
9 found guilty of one or more crimes of violence constituting a
10 felony, unless the record has been expunged. The chief of
11 police, may revoke a license if the licensee has been found
12 guilty of one or more misdemeanor or felony crimes of violence
13 within the preceding three years and shall revoke the license if
14 so ordered by the court. The chief of police, upon notification
15 by a law enforcement agency, a court, or the attorney general,
16 and subsequent written verification, shall suspend a license or
17 the processing of an application for a license if the licensee
18 or applicant is arrested or formally charged with a crime that
19 would disqualify the person from having a license under this
20 section, until final disposition of the case.



1 (d) The application shall be completed, under oath, on a
2 form prescribed by the attorney general, which shall be uniform
3 throughout the State, and shall include:

4 (1) The name, address, place and date of birth, race, and
5 occupation of the applicant;

6 (2) A statement that the applicant is in compliance with
7 criteria contained within subsections (b) and (c);

8 (3) A statement that the applicant has been furnished a
9 copy of this chapter and is knowledgeable of its
10 provisions;

11 (4) A conspicuous warning that the application is executed
12 under oath and that a false answer to any question, or
13 the submission of any false document by the applicant,
14 subjects the applicant to criminal prosecution under
15 section 134-17(a); and

16 (5) A statement that the applicant desires an open carry
17 weapon or firearm license for lawful purposes.

18 (e) The applicant shall submit to the appropriate chief of
19 police:

20 (1) A completed application as described in subsection
21 (d);



- 1 (2) A nonrefundable license fee not to exceed \$100, if the
2 applicant has not previously been issued a license, or
3 a nonrefundable license fee not to exceed \$50 for
4 renewal of a license. Costs for processing the set of
5 fingerprints as required in paragraph (3) shall be
6 borne by the applicant. If any individual described
7 in section 134-11(a)(1) or (4) wishes to receive an
8 open carry weapon or firearm license, the person is
9 exempt from the background investigation and all
10 background investigation fees, but shall pay the
11 current license fees regularly required to be paid by
12 nonexempt applicants; provided further that the person
13 is exempt from the required fees and background
14 investigation for a period of one year subsequent to
15 the date of retirement of the person;
- 16 (3) A full set of fingerprints of the applicant
17 administered by a law enforcement agency;
- 18 (4) A photocopy of a certificate or an affidavit or
19 document as described in subsection (b)(7); and
- 20 (5) A full frontal view color photograph of the applicant
21 taken within the preceding thirty days, in which the



1 head, including hair, measures seven-eighths of an
2 inch wide and one and one-eighth inches high.

3 (f) (1) The appropriate chief of police, upon receipt of
4 the items listed in subsection (e), shall forward
5 within three working days the full set of fingerprints
6 of the applicant to the attorney general and the
7 Federal Bureau of Investigation for state and federal
8 processing; provided the federal service is available.
9 The cost of processing the fingerprints shall be
10 payable to the State;

11 (2) The county police department shall provide
12 fingerprinting service, if requested by the applicant,
13 and may charge a fee not to exceed \$5 for this
14 service;

15 (3) The appropriate county chief of police, within forty-
16 five days after the date of receipt of the items
17 listed in subsection (e), shall:

18 (A) Issue the license;

19 (B) Deny the application based solely on the ground
20 that the applicant fails to qualify under
21 subsection (b) or (c). Upon a denial of the
22 application, the chief of police shall notify the



- 1 applicant in writing, stating the ground for
2 denial and informing the applicant of any right
3 to a hearing pursuant to subsection (k); or
4 (C) Suspend the time limitation prescribed by this
5 paragraph if the chief of police receives
6 criminal history information with no final
7 disposition on a crime that may disqualify the
8 applicant until receipt of the final disposition
9 or proof of restoration of civil and firearm
10 rights;
- 11 (4) If a legible set of fingerprints, as determined by the
12 attorney general or the Federal Bureau of
13 Investigation, cannot be obtained after two attempts,
14 the attorney general shall determine eligibility based
15 upon name checks conducted by the criminal justice
16 data center; and
- 17 (5) If the appropriate county chief of police fails to
18 issue or deny the license within forty-five days after
19 the date of receipt of the items listed in subsection
20 (e) or within such further time as may be necessary
21 under paragraph (3)(C), the application shall be



1 deemed denied and the applicant shall have the right
2 to a hearing as provided in subsection (k).

3 (g) The attorney general shall maintain an automated
4 listing of license holders and pertinent information, which
5 shall be available on the internet, upon request, at all times
6 to all law enforcement agencies through the criminal justice
7 data center.

8 (h) Within thirty days after the changing of a permanent
9 address, or within thirty days after having a license lost or
10 destroyed, the licensee shall notify the appropriate chief of
11 police of the change or loss. Failure to notify the appropriate
12 chief of police pursuant to this subsection shall constitute a
13 noncriminal violation with a penalty of a \$25 fine.

14 (i) If an open carry firearm license is lost or destroyed,
15 the license shall be automatically invalid, and the person to
16 whom the license was issued, upon payment of \$15 to the
17 appropriate chief of police, may obtain a duplicate, or
18 substitute thereof, upon furnishing a notarized statement to the
19 chief of police that the license has been lost or destroyed.

20 (j) A license issued under this section shall be suspended
21 or revoked by the chief of police, pursuant to subsection (k),
22 if the licensee is found to be or subsequently becomes



1 ineligible under the criteria set forth in subsection (b) or
2 (c).

3 (k) Any person denied a license, or who has a license
4 suspended or revoked under this section shall have the right to
5 a hearing on the denial, suspension, or revocation, subject to
6 the requirements for contested cases and judicial review under
7 chapter 91.

8 (1) Not less than ninety days prior to the expiration date
9 of the license, the appropriate county chief of police shall
10 mail to each licensee a written notice of the expiration and a
11 renewal form prescribed by the attorney general, which shall be
12 uniform through the State. The licensee must renew the license,
13 on or before the expiration date, by filing with the appropriate
14 county chief of police the renewal form containing: a notarized
15 affidavit stating that the licensee remains qualified pursuant
16 to the criteria specified in subsections (b) and (c); a color
17 photograph as specified in paragraph (e) (5); and the required
18 renewal fee. The license shall be renewed upon receipt of the
19 completed renewal form, color photograph, appropriate payment of
20 fees, and, if applicable, a completed fingerprint card.
21 Additionally, a licensee who fails to file a renewal application
22 on or before its expiration date shall renew the license by



1 paying a late fee of \$15. No license shall be renewed six
2 months or more after its expiration date, and the license shall
3 be deemed to be permanently expired. A person whose license has
4 permanently expired may reapply for licensure; however, an
5 application for licensure and fees pursuant to subsection (e)
6 shall be submitted, and a background investigation shall be
7 conducted pursuant to this section. Persons who knowingly file
8 false information pursuant to this subsection shall be subject
9 to criminal prosecution under section 134-17(a).

10 (m) No license issued pursuant to this section shall
11 authorize any person to openly carry a firearm into any:

12 (1) Place of nuisance pursuant to section 712-1270;

13 (2) Police station;

14 (3) Detention facility, prison, or jail;

15 (4) Courthouse, except where permitted by subsection (5)
16 of this section;

17 (5) Courtroom, except that nothing in this section shall
18 preclude a judge from lawfully carrying a weapon or
19 determining who may openly carry a weapon in the
20 courtroom;

21 (6) Polling place;



- 1 (7) Meeting of the governing body of a county or other
- 2 political subdivision, the board of education, or any
- 3 neighborhood board;
- 4 (8) Meeting of the legislature or a committee thereof;
- 5 (9) School administration building;
- 6 (10) Public school facility, state university, and
- 7 community college, including the parking areas and
- 8 grounds;
- 9 (11) Any establishment licensed to serve alcohol for on-
- 10 premises consumption;
- 11 (12) Any establishment or event open to the public where
- 12 the operator makes a reasonable request for licensee
- 13 to give operator custody or remove the weapon from the
- 14 premises;
- 15 (13) Designated federal security screening area within the
- 16 passenger terminal and sterile area of any airport;
- 17 and
- 18 (14) Locked psychiatric units.
- 19 Any person who violates any provision of this subsection
- 20 shall be guilty of a class C felony.
- 21 (n) All funds received by a county police department
- 22 pursuant to this section shall be deposited into the general



1 fund of the respective county and shall be budgeted to the
2 police department.

3 (o) The attorney general shall maintain statistical
4 information on the number of licenses issued, revoked,
5 suspended, and denied."

6 SECTION 2. Section 134-2, Hawaii Revised Statutes, is
7 amended by amending subsection (e) to read as follows:

8 "(e) The permit application form shall be signed by the
9 applicant and by the issuing authority. One copy of the permit
10 shall be retained by the issuing authority as a permanent
11 official record. Except for sales to dealers licensed under
12 section 134-31, or dealers licensed by the United States
13 Department of the Justice, or law enforcement officers, or where
14 a license is granted under sections 134-9 and 134-, or where
15 any firearm is registered pursuant to section 134-3(a), no
16 permit shall be issued to an applicant earlier than fourteen
17 calendar days after the date of the application; provided that a
18 permit shall be issued or the application denied before the
19 twentieth day from the date of application. Permits issued to
20 acquire any pistol or revolver shall be void unless used within
21 ten days after the date of issue. Permits to acquire a pistol
22 or revolver shall require a separate application and permit for



1 each transaction. Permits issued to acquire any rifle or
2 shotgun shall entitle the permittee to make subsequent purchases
3 of rifles or shotguns for a period of one year from the date of
4 issue without a separate application and permit for each
5 acquisition, subject to the disqualifications under section 134-
6 7 and subject to revocation under section 134-13; provided that
7 if a permittee is arrested for committing a felony or any crime
8 of violence or for the illegal sale of any drug, the permit
9 shall be impounded and shall be surrendered to the issuing
10 authority. The issuing authority shall perform an inquiry on an
11 applicant who is a citizen of the United States by using the
12 National Instant Criminal Background Check System before any
13 determination to issue a permit or to deny an application is
14 made. If the applicant is not a citizen of the United States
15 and may be eligible to acquire a firearm under this chapter, the
16 issuing authority shall perform an inquiry on the applicant, by
17 using the National Instant Criminal Background Check System, to
18 include a check of the Immigration and Customs Enforcement
19 databases, where the applicant is not a citizen of the United
20 States, before any determination to issue a permit or to deny an
21 application is made."



1 SECTION 3. Section 134-9, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) No person shall carry concealed or unconcealed on the
4 person a pistol or revolver without being licensed to do so
5 under this section or section 134- , or in compliance with
6 sections 134-5(c) or 134-25."

7 SECTION 4. Section 134-11, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§134-11 Exemptions.** (a) Sections 134-7 to 134-9 and
10 134-21 to [134-27] 134- , except section 134-7(f), shall not
11 apply:

12 (1) To state and county law enforcement officers; provided
13 that such persons are not convicted of an offense
14 involving abuse of a family or household member under
15 section 709-906;

16 (2) To members of the armed forces of the State and of the
17 United States and mail carriers while in the
18 performance of their respective duties if those duties
19 require them to be armed;

20 (3) To regularly enrolled members of any organization duly
21 authorized to purchase or receive the weapons from the
22 United States or from the State; provided the members



1 are either at, or going to or from, their places of
2 assembly or target practice;

3 (4) To persons employed by the State, or subdivisions
4 thereof, or the United States while in the performance
5 of their respective duties or while going to and from
6 their respective places of duty if those duties
7 require them to be armed;

8 (5) To aliens employed by the State, or subdivisions
9 thereof, or the United States while in the performance
10 of their respective duties or while going to and from
11 their respective places of duty if those duties
12 require them to be armed; and

13 (6) To police officers on official assignment in Hawaii
14 from any state which by compact permits police
15 officers from Hawaii while on official assignment in
16 that state to carry firearms without registration.

17 The governor of the State or the governor's duly
18 authorized representative may enter into compacts with
19 other states to carry out this paragraph.

20 (b) Sections 134-2 and 134-3 shall not apply to such
21 firearms or ammunition that are a part of the official equipment
22 of any federal agency.



1 (c) Sections 134-8, 134-9, and 134-21 to [~~134-27~~] 134-,
2 shall not apply to the possession, transportation, or use, with
3 blank cartridges, of any firearm or explosive solely as props
4 for motion picture film or television program production when
5 authorized by the chief of police of the appropriate county
6 pursuant to section 134-2.5 and not in violation of federal
7 law."

8 SECTION 5. Section 134-23, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Except as provided in section 134-5 and 134-, all
11 firearms shall be confined to the possessor's place of business,
12 residence, or sojourn; provided that it shall be lawful to carry
13 unloaded firearms in an enclosed container from the place of
14 purchase to the purchaser's place of business, residence, or
15 sojourn, or between these places upon change of place of
16 business, residence, or sojourn, or between these places and the
17 following:

- 18 (1) A place of repair;
19 (2) A target range;
20 (3) A licensed dealer's place of business;
21 (4) An organized, scheduled firearms show or exhibit;



1 (5) A place of formal hunter or firearm use training or
2 instruction; or

3 (6) A police station.

4 "Enclosed container" means a rigidly constructed
5 receptacle, or a commercially manufactured gun case, or the
6 equivalent thereof that completely encloses the firearm."

7 SECTION 6. Section 134-24, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Except as provided in section 134-5 and 134-__, all
10 firearms shall be confined to the possessor's place of business,
11 residence, or sojourn; provided that it shall be lawful to carry
12 unloaded firearms in an enclosed container from the place of
13 purchase to the purchaser's place of business, residence, or
14 sojourn, or between these places upon change of place of
15 business, residence, or sojourn, or between these places and the
16 following:

17 (1) A place of repair;

18 (2) A target range;

19 (3) A licensed dealer's place of business;

20 (4) An organized, scheduled firearms show or exhibit;

21 (5) A place of formal hunter or firearm use training or
22 instruction; or



1 (6) A police station.

2 "Enclosed container" means a rigidly constructed
3 receptacle, or a commercially manufactured gun case, or the
4 equivalent thereof that completely encloses the firearm."

5 SECTION 7. Section 134-25, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Except as provided in section 134-5~~and~~, 134-9 and
8 134-, all firearms shall be confined to the possessor's place
9 of business, residence, or sojourn; provided that it shall be
10 lawful to carry unloaded firearms in an enclosed container from
11 the place of purchase to the purchaser's place of business,
12 residence, or sojourn, or between these places upon change of
13 place of business, residence, or sojourn, or between these
14 places and the following:

- 15 (1) A place of repair;
16 (2) A target range;
17 (3) A licensed dealer's place of business;
18 (4) An organized, scheduled firearms show or exhibit;
19 (5) A place of formal hunter or firearm use training or
20 instruction; or
21 (6) A police station.



1 "Enclosed container" means a rigidly constructed
2 receptacle, or a commercially manufactured gun case, or the
3 equivalent thereof that completely encloses the firearm."

4 SECTION 8. Section 134-26, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) It shall be unlawful for any person on any public
7 highway to carry on the person, or to have in the person's
8 possession, or to carry in a vehicle any firearm loaded with
9 ammunition; provided that this section shall not apply to any
10 person who has in the person's possession or carries a pistol or
11 revolver in accordance with a license issued as provided in
12 ~~[section]~~ sections 134-9 and 134-__."

13 SECTION 9. Section 134-27, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Except as provided in sections 134-5~~[and]~~, 134-9 and
16 134-__, all ammunition shall be confined to the possessor's
17 place of business, residence, or sojourn; provided that it shall
18 be lawful to carry ammunition in an enclosed container from the
19 place of purchase to the purchaser's place of business,
20 residence, or sojourn, or between these places upon change of
21 place of business, residence, or sojourn, or between these
22 places and the following:



- 1 (1) A place of repair;
- 2 (2) A target range;
- 3 (3) A licensed dealer's place of business;
- 4 (4) An organized, scheduled firearms show or exhibit;
- 5 (5) A place of formal hunter or firearm use training or
- 6 instruction; or
- 7 (6) A police station.

8 "Enclosed container" means a rigidly constructed
9 receptacle, or a commercially manufactured gun case, or the
10 equivalent thereof that completely encloses the ammunition.

11 SECTION 10. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 11. This Act does not affect rights and duties
14 that matured, penalties that were incurred, and proceedings that
15 were begun, before its effective date.

16 SECTION 12. If any provision of this Act, or the
17 application thereof to any person or circumstance is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act, which can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.

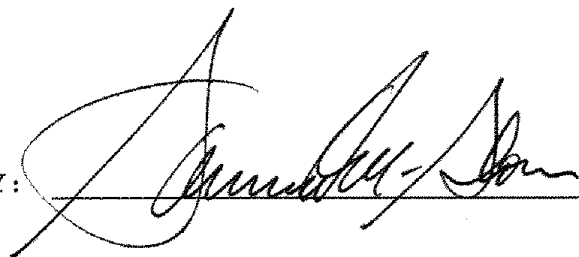
22 SECTION 13. This Act shall take effect upon its approval.



S.B. NO. 132

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INTRODUCED BY:

A handwritten signature in cursive script, written over a horizontal line. The signature appears to be "Assemblyman" followed by a name that is difficult to decipher due to the cursive style.

Report Title:

Firearms; Open carry license.

Description:

Authorizes chiefs of police to issue licenses to openly carry a firearm. Details processes for license applications, renewals, and record keeping. Strictly prohibits openly carrying firearms under certain circumstances.

