

JAN 21 2011

S.B. NO. 836

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. Any person in compliance with the terms of the
10 license may openly carry a firearm. The licensee shall carry
11 the license, together with valid identification, at all times in
12 which the licensee is in actual possession of a firearm and
13 shall display both the license and proper identification upon
14 demand by a law enforcement officer. A violation of this
15 subsection shall constitute a petty misdemeanor, provided that
16 the maximum term of imprisonment shall be three days, and the
17 maximum fine shall be \$500.

18



1 For the purposes of this section, "to openly carry a
2 firearm" means a firearm that is a pistol or a revolver, and
3 that is holstered in such a manner that two to three inches of
4 the holster are visible, and the holstered firearm is not
5 covered or enclosed so an observer cannot determine that it is a
6 handgun without removing it from that which covers or encloses
7 it or without opening, lifting, or removing that which covers or
8 encloses it; and the term does not include an assault pistol or
9 automatic firearm as defined in section 134-1.

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 section 134-2(g), to
22 include practical training in drawing and replacing a



1 handgun from and to a holster. A photocopy of an
2 affidavit from the certified instructor or standard
3 government form from the government agency providing
4 said training, attesting to the successful completion
5 of 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
14 if so ordered by the court. The chief of police, upon
15 notification by a law enforcement agency, a court, or the
16 attorney general, and subsequent written verification, shall
17 suspend a license or the processing of an application for a
18 license if the licensee or applicant is arrested or formally
19 charged with a crime that would disqualify the person from
20 having a license under this section, until final disposition of
21 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 subsection (b), and that the
8 applicant is not subject to license denial,
9 suspension, or revocation under subsection (c);

10 (3) A statement that the applicant has been furnished a
11 copy of this chapter and any applicable administrative
12 rules, and is knowledgeable of its provisions;

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

18 (5) A statement that the applicant desires an open carry
19 firearm license for lawful purposes.

20 (e) The applicant shall submit to the appropriate chief of
21 police:



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



1 (5) A full frontal view color photograph of the applicant
2 taken within the preceding thirty days, in which the
3 head, including hair, measures seven-eighths of an
4 inch wide and one and one-eighth of an inch high.

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

13 The county police department shall provide fingerprinting
14 service, if requested by the applicant, and may charge a fee not
15 to exceed \$5 for this service.

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

- 19 (1) Issue the license;
20 (2) Deny the application based solely on the ground that
21 the applicant fails to qualify under subsection (b) or
22 (c). Upon a denial of the application, the chief of



1 police shall notify the applicant in writing, stating
2 the grounds for denial and informing the applicant of
3 any right to a hearing pursuant to subsection (k); or
4 (3) Suspend the time limitation prescribed by this
5 paragraph if the chief of police receives criminal
6 history information with no final disposition on a
7 crime that may disqualify the applicant until receipt
8 of the final disposition or proof of restoration of
9 civil and firearm rights.

10 If a legible set of fingerprints, as determined by the
11 attorney general or the Federal Bureau of Investigation, cannot
12 be obtained after two attempts, the attorney general shall
13 determine eligibility based upon name checks conducted by the
14 criminal justice data center.

15 If the appropriate county chief of police fails to issue or
16 deny the license within forty-five days after the date of
17 receipt of the items listed in subsection (e) or within such
18 further time limits as this subsection allows, the application
19 shall be deemed denied and the applicant shall have the right to
20 a hearing as provided in subsection (k).

21 (g) The attorney general shall maintain an automated
22 listing of license holders and pertinent information, which



1 shall be available on the internet, upon request, at all times
2 to all law enforcement agencies through the criminal justice
3 data center.

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

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

16 (j) A license issued under this section shall be suspended
17 or revoked by the chief of police if the licensee is found to be
18 or subsequently becomes ineligible under the criteria set forth
19 in subsection (b) or (c).

20 (k) Any person denied a license, or who has a license
21 suspended or revoked under this section shall have the right to
22 a hearing on the denial, suspension, or revocation, subject to



1 the requirements for contested cases and judicial review under
2 chapter 91.

3 (1) Not less than ninety days prior to the expiration date
4 of the license, the appropriate county chief of police shall
5 mail to each licensee a written notice of the expiration and a
6 renewal form prescribed by the attorney general, which shall be
7 uniform throughout the State. The licensee must renew the
8 license, on or before the expiration date, by filing with the
9 appropriate county chief of police the renewal form containing:
10 a notarized affidavit stating that the licensee remains
11 qualified pursuant to the criteria specified in subsections (b)
12 and (c); a color photograph as specified in subsection (e)(5);
13 and the required renewal fee. The license shall be renewed upon
14 receipt of the completed renewal form, color photograph,
15 appropriate payment of fees, and, if applicable, a completed
16 fingerprint card. A licensee who fails to file a renewal
17 application on or before its expiration date shall renew the
18 license by paying a late fee of \$15. No license shall be
19 renewed six months or more after its expiration date, and the
20 license shall be deemed to be permanently expired. A person
21 whose license has permanently expired may reapply for licensure;
22 however, an application for licensure and fees pursuant to



1 subsection (e) shall be submitted, and a background
2 investigation shall be conducted pursuant to this section.
3 Persons who knowingly file false information pursuant to this
4 subsection shall be subject to criminal prosecution under
5 section 134-17(a).

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

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

9 (2) Police station;

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

11 (4) Courthouse, except where permitted by subsection
12 (m) (5);

13 (5) Courtroom, except that nothing in this section shall
14 preclude a judge from lawfully carrying a weapon or
15 determining who may openly carry a weapon in the
16 courtroom;

17 (6) Polling place;

18 (7) Meeting of the governing body of a county or other
19 political subdivision, the board of education, or any
20 neighborhood board;

21 (8) Meeting of the legislature or a committee thereof;

22 (9) School administration building;



- 1 (10) Public school facility, state university, and
2 community college, including the parking areas and
3 grounds;
- 4 (11) Any establishment licensed to serve alcohol for on-
5 premises consumption;
- 6 (12) Any establishment or event open to the public where
7 the operator makes a reasonable request for licensee
8 to give operator custody or remove the weapon from the
9 premises;
- 10 (13) Designated federal security screening areas within the
11 passenger terminal and sterile areas of any airport;
12 and

13 (14) Locked psychiatric units.
14 Any person who violates any provision of this subsection
15 shall be guilty of a class C felony.

16 (n) All funds received by a county police department
17 pursuant to this section shall be deposited into the general
18 fund of the respective county and shall be budgeted to the
19 police department.

20 (o) The attorney general shall maintain statistical
21 information on the number of licenses issued, revoked,
22 suspended, and denied."



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

3 "(e) The permit application form shall be signed by the
4 applicant and by the issuing authority. One copy of the permit
5 shall be retained by the issuing authority as a permanent
6 official record. Except for sales to dealers licensed under
7 section 134-31, or dealers licensed by the United States
8 Department of Justice, or law enforcement officers, or where a
9 license is granted under ~~[section]~~ sections 134-9[7] and 134- ,
10 or where any firearm is registered pursuant to section 134-3(a),
11 no permit shall be issued to an applicant earlier than fourteen
12 calendar days after the date of the application; provided that a
13 permit shall be issued or the application denied before the
14 twentieth day from the date of application. Permits issued to
15 acquire any pistol or revolver shall be void unless used within
16 ten days after the date of issue. Permits to acquire a pistol
17 or revolver shall require a separate application and permit for
18 each transaction. Permits issued to acquire any rifle or
19 shotgun shall entitle the permittee to make subsequent purchases
20 of rifles or shotguns for a period of one year from the date of
21 issue without a separate application and permit for each
22 acquisition, subject to the disqualifications under section 134-



1 7 and subject to revocation under section 134-13; provided that
2 if a permittee is arrested for committing a felony or any crime
3 of violence or for the illegal sale of any drug, the permit
4 shall be impounded and shall be surrendered to the issuing
5 authority. The issuing authority shall perform an inquiry on an
6 applicant who is a citizen of the United States by using the
7 National Instant Criminal Background Check System before any
8 determination to issue a permit or to deny an application is
9 made. If the applicant is not a citizen of the United States
10 and may be eligible to acquire a firearm under this chapter, the
11 issuing authority shall perform an inquiry on the applicant, by
12 using the National Instant Criminal Background Check System, to
13 include a check of the Immigration and Customs Enforcement
14 databases, before any determination to issue a permit or to deny
15 an application is made."

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

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



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

3 "§134-11 Exemptions. (a) Sections 134-7 to 134-9, [and]
4 134-21 to 134-27, and 134- , except section 134-7(f), shall not
5 apply:

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

10 (2) To members of the armed forces of the State and of the
11 United States and mail carriers while in the
12 performance of their respective duties if those duties
13 require them to be armed;

14 (3) To regularly enrolled members of any organization duly
15 authorized to purchase or receive the weapons from the
16 United States or from the State; provided the members
17 are either at, or going to or from, their places of
18 assembly or target practice;

19 (4) To persons employed by the State, or subdivisions
20 thereof, or the United States while in the performance
21 of their respective duties or while going to and from



1 their respective places of duty if those duties
2 require them to be armed;

3 (5) To aliens 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; and

8 (6) To police officers on official assignment in Hawaii
9 from any state which by compact permits police
10 officers from Hawaii while on official assignment in
11 that state to carry firearms without registration.

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

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

18 (c) Sections 134-8, 134-9, [and] 134-21 to 134-27, and
19 134- , shall not apply to the possession, transportation, or
20 use, with blank cartridges, of any firearm or explosive solely
21 as props for motion picture film or television program
22 production when authorized by the chief of police of the



1 appropriate county pursuant to section 134-2.5 and not in
2 violation of federal law."

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

5 "(a) Except as provided in [~~section~~] sections 134-5[7] and
6 134-___, all firearms shall be confined to the possessor's place
7 of business, residence, or sojourn; provided that it shall be
8 lawful to carry unloaded firearms in an enclosed container from
9 the place of purchase to the purchaser's place of business,
10 residence, or sojourn, or between these places upon change of
11 place of business, residence, or sojourn, or between these
12 places and the following:

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

20 "Enclosed container" means a rigidly constructed
21 receptacle, or a commercially manufactured gun case, or the
22 equivalent thereof that completely encloses the firearm."



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

3 "(a) Except as provided in [~~section~~] sections 134-5[~~7~~] and
4 134- , all firearms shall be confined to the possessor's place
5 of business, residence, or sojourn; provided that it shall be
6 lawful to carry unloaded firearms in an enclosed container from
7 the place of purchase to the purchaser's place of business,
8 residence, or sojourn, or between these places upon change of
9 place of business, residence, or sojourn, or between these
10 places and the following:

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

18 "Enclosed container" means a rigidly constructed
19 receptacle, or a commercially manufactured gun case, or the
20 equivalent thereof that completely encloses the firearm."

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



1 "(a) Except as provided in sections 134-5, [and] 134-9,
2 and 134- , all firearms shall be confined to the possessor's
3 place of business, residence, or sojourn; provided that it shall
4 be lawful to carry unloaded firearms in an enclosed container
5 from the place of purchase to the purchaser's place of business,
6 residence, or sojourn, or between these places upon change of
7 place of business, residence, or sojourn, or between these
8 places and the following:

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

16 "Enclosed container" means a rigidly constructed
17 receptacle, or a commercially manufactured gun case, or the
18 equivalent thereof that completely encloses the firearm."

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

21 "(a) It shall be unlawful for any person on any public
22 highway to carry on the person, or to have in the person's



1 possession, or to carry in a vehicle any firearm loaded with
2 ammunition; provided that this section shall not apply to any
3 person who has in the person's possession or carries a pistol or
4 revolver in accordance with a license issued as provided in
5 ~~[section]~~ sections 134-9[-] and 134- ."

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

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

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

4 SECTION 10. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

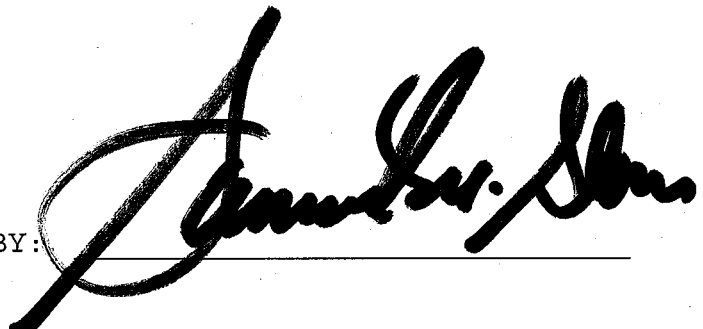

6 SECTION 11. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun, before its effective date.

9 SECTION 12. If any provision of this Act, or the
10 application thereof to any person or circumstance is held
11 invalid, the invalidity does not affect other provisions or
12 applications of the Act, which can be given effect without the
13 invalid provision or application, and to this end the provisions
14 of this Act are severable.

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

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INTRODUCED BY:

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.

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