

Charlotte A. Carter-Yamauchi
Director

Shawn K. Nakama
First Assistant

Research 808-587-0666
Revisor 808-587-0670
Fax 808-587-0681

DEPT. COMM. NO. 166



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
Honolulu, Hawaii 96813

December 20, 2023

The Honorable Ronald D. Kouchi
Senate President
415 South Beretania Street
Hawaii State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker, House of Representatives
415 South Beretania Street
Hawaii State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi and Speaker Saiki:

Subject: *Pistol Premiums: Firearm Insurance Mandates and Related Issues*

We are pleased to inform you that an electronic copy of the Bureau's latest publication: *Pistol Premiums: Firearm Insurance Mandates and Related Issues*, which was prepared in response to House Concurrent Resolution No. 86, H.D. 1, S.D. 1 (2023), has been transmitted to you via the Legislature's web-based application. An electronic copy of the report may also be accessed on the Bureau's Library website at:

https://lrb.hawaii.gov/wp-content/uploads/2023_PistolPremiums.pdf

A limited number of printed copies will be available shortly from the Bureau's Library.

We hope this publication will be of assistance to you and your staff. If you have any questions or require further assistance, please contact Paul Kanoho by phone at 808-587-0684 or by email at pa.kanoho@capitol.hawaii.gov.

Very truly yours,

A handwritten signature in cursive script that reads "Charlotte A. Carter-Yamauchi".

Charlotte A. Carter-Yamauchi
Director

jl

cc: Senators
Representatives

PISTOL PREMIUMS: FIREARM INSURANCE MANDATES AND RELATED ISSUES

PART I:

Primary Researchers:

PAUL KANOHO
JORDON HIGA
DEVIN CHOY
Research Attorneys

Supervising Researcher:

JOHNNY BRANNON
Senior Attorney

PART II:

Authored By:

GORDON ITO
Insurance Commissioner

Report No. 1, 2023

Legislative Reference Bureau
State Capitol
Honolulu, Hawaii
<http://lrbhawaii.org>

This report has been cataloged as follows:

Kanoho, Paul + Higa, Jordon + Choy, Devin + Brannon, Johnny + Ito, Gordon
Pistol premiums : firearm insurance mandates and related issues.
Honolulu, Hawaii : Legislative Reference Bureau, December 2023.

1. Liability insurance – Law and legislation – United States – States.
2. Firearms – Law and legislation – United States – States.
3. Products liability – Firearms – United States – States.

KFH421.5 L35 A25 23-1

FOREWORD

This Report was prepared pursuant to House Concurrent Resolution No. 86, H.D. 1, S.D. 1 (2023), which requested the Legislative Reference Bureau (Bureau) to "summarize . . . relevant mandatory insurance laws of the State of New Jersey and the City of San Jose [California], and any similar insurance laws that other states may be enacting, as well as any current laws that impose other financial responsibilities on firearms." The Resolution further stated that "as a part of the Report, the Insurance Commissioner is requested to provide an analysis of the types of firearm insurance policies offered in other states, which entities are offering those policies, and the pricing of those policies."

The Report is divided into two parts: Part I was authored by the Bureau and contains research requested of the Bureau, and Part II was prepared by staff of the Insurance Division of the Department of Commerce and Consumer Affairs.

The Bureau and the authors of Part I of this Report acknowledge and thank other members of the Bureau staff for their contributions, including Karen Mau, DeAnna Kan, Chelsey Kim, and others. The Bureau further recognizes the assistance received from the National Conference of State Legislatures. The Bureau also wishes to thank Insurance Commissioner Gordon Ito and the staff of the Insurance Division of the Department of Commerce and Consumer Affairs for their diligence in preparing Part II of this Report.

Charlotte A. Carter-Yamauchi
Director

December 2023

Table of Contents

	<i>Page</i>
FOREWORD	<i>iii</i>
 <i>PART I by the Legislative Reference Bureau</i>	
EXECUTIVE SUMMARY FOR PART I	<i>ix</i>
 1. INTRODUCTION	 1
ORIGIN OF THE REPORT.....	1
SCOPE OF THE REPORT	2
ORGANIZATION OF THE REPORT.....	3
THE BUREAU'S APPROACH TO PART I OF THE REPORT	3
ORGANIZATION OF PART I OF THE REPORT	3
ENDNOTES	4
 2. CURRENT FIREARM INSURANCE LAWS.....	 5
SAN JOSE, CALIFORNIA	5
Relevant Insurance Provisions.....	5
Other Provisions.....	6
Status of the Law	6
NEW JERSEY	7
Relevant Insurance Provisions.....	7
Other Provisions.....	8
Status of the Law	8
ENDNOTES	9
 3. PROPOSED LEGISLATION IN OTHER STATES TO MANDATE FIREARM INSURANCE.....	 14
STATE MEASURES PROPOSING TO REQUIRE FIREARM INSURANCE	14
California	14
Illinois	14
Massachusetts	14
Minnesota.....	15
New Jersey.....	15
New York.....	15
North Carolina	15
South Carolina	16
Tennessee.....	16

	<i>Page</i>
Vermont	16
ENDNOTES	16
4. OTHER STATES' FINANCIAL RESPONSIBILITY REQUIREMENTS	18
SURETY STATUTES, GENERALLY	18
SPECIFIC STATE LAWS	19
Maine	19
Minnesota.....	19
West Virginia.....	20
Similar Repealed Laws	20
ENDNOTES	21
5. IN CONCLUSION: REVIEW, COMMENTS, AND OBSERVATIONS	24
FINANCIAL RESPONSIBILITY LAWS AND BILLS, SUMMARIZED	24
PENDING LEGISLATION IN HAWAII.....	24
ENDNOTES	26

PART II *by the Insurance Commissioner*

LETTER DATED OCTOBER 17, 2023	29
-------------------------------------	----

Appendices

A. House Concurrent Resolution No. 86, H.D. 1, S.D. 1, Thirty-second Legislature, Regular Session of 2023	31
B. Concealed-Carry Firearm Permits Issued/Denied, Private Citizens, 2023 (Incomplete).....	34

Page intentionally left blank

PART I

BY THE LEGISLATIVE REFERENCE BUREAU

Page intentionally left blank

EXECUTIVE SUMMARY FOR PART I

The Legislative Reference Bureau (Bureau) prepared Part I of this Report pursuant to House Concurrent Resolution No. 86, H.D. 1, S.D. 1 (2023) (hereinafter H.C.R. No. 86), which in pertinent part requested the Bureau to "summarize the relevant mandatory insurance laws of the State of New Jersey and the City of San Jose, [California,] and any similar insurance laws that other states may be enacting, as well as any current laws that impose other financial responsibilities on firearms." Part I of this Report comprises the Bureau's response.

H.C.R. No. 86 also requested the Insurance Commissioner to analyze "the types of firearm insurance policies offered in other states, which entities are offering those policies, and the pricing of those policies." Part II of this Report contains the Insurance Commissioner's analysis as submitted to the Bureau.

The Bureau's Approach to Part I of this Report

The Bureau examined the mandatory firearm owner insurance laws of San Jose, California, and New Jersey, and contacted relevant public officials in both jurisdictions for information about the status and impacts of those laws. With assistance from the National Conference of State Legislatures, the Bureau also reviewed legislation proposed in other states that would require owners and possessors of firearms to obtain insurance. The Bureau also reviewed other relevant laws that impose financial responsibilities relating to firearms—specifically, surety laws.¹

Status of the Enforcement of Firearm Insurance Laws

Although the City of San Jose, California, and the State of New Jersey have enacted laws that require certain owners or possessors of firearms to maintain insurance coverage, enforcement of these laws has been affected to varying degrees by litigation and other factors.

In 2022, San Jose ordained Ordinance No. 30716, which in pertinent part, requires non-exempt² city residents who own or possess a firearm in San Jose to obtain and maintain a homeowner's, renter's, or gun liability insurance policy that covers losses or damages resulting from accidental use of the firearm, including death, injury, or property damage. The ordinance does not specify minimum coverage requirements. A person who is required to comply with the ordinance shall demonstrate compliance through a city-designated attestation form, and shall present the form when lawfully requested to do so by a law enforcement officer who knows or has reason to believe that the person possesses a firearm. Current fines for violations of the insurance provisions are: \$250 for a first violation; \$500 for a second violation within a one-year period from the date of a previous violation; and \$1,000 for a third or subsequent violation within one year

from the date of a previous violation. However, San Jose's efforts to enforce this law have faced a legal challenge based on constitutional grounds. Although the United States District Court for the Northern District of California granted the City's motion to dismiss the challenge, plaintiffs filed an appeal, which, as of November 2023, is pending before the United States Court of Appeals for the Ninth Circuit. The website of the San Jose Police Department states as of November 2023 that the ordinance's insurance requirement is being enforced. However, the Bureau was unable to determine whether police have taken enforcement actions against any individuals for allegedly violating the insurance requirement.

Also in 2022, the State of New Jersey enacted P.L. 2022, Chapter 131 ("Act 131"), which in pertinent part, requires citizens who carry handguns in public places within that state to maintain liability insurance coverage against loss for bodily injury, death, or property damage arising from the ownership, maintenance, operation, or use of the firearm. Act 131 requires that coverage shall be at least in an amount or limit of \$300,000, exclusive of interest and costs, on account of injury to or death of more than one person and for damage to property, in any one incident. The Act also requires an insured person to provide proof of insurance if any applicable incident occurs. Pursuant to the Act, a permit to carry a handgun in public places may be denied for lack of insurance. Act 131 also provides that a person who is required to maintain insurance but carries a concealed handgun in public without proof of insurance may be imprisoned for up to eighteen months and fined up to \$10,000. However, in May of this year, the United States District Court for the District of New Jersey issued a preliminary injunction against many of the provisions of Act 131, including the Act's insurance provisions. As of November 2023, an appeal was pending before the United States Court of Appeals for the Third Circuit.

Proposed Legislation in Other States to Mandate Firearm Insurance

Fourteen measures pending before ten other state legislatures relate to insurance for firearm owners or possessors. Thirteen of these measures, pending before nine state legislatures,³ propose to require either firearm owners to obtain insurance or insurers to offer that insurance. The fourteenth measure proposes to establish a task force to study existing and potential future firearm insurance coverage.⁴

Other Financial Responsibility Requirements

Three states (Maine, Minnesota, and West Virginia) currently have laws that authorize a judge or magistrate to order an individual to obtain surety to keep the peace as a condition to being armed in public with a firearm or other dangerous weapon. Rarely enforced, these laws would apply only upon a specific allegation that the person has threatened a breach of the peace and a finding, after a hearing, of probable cause to believe that the person intends to commit the threatened offense. Similar laws in several other states⁵ have long been repealed.

Comments and Observations

Mandatory insurance requirements for gun owners or possessors are relatively new. As explained above, implementation of the only two such laws enacted in the United States—for the City of San Jose, California, and the State of New Jersey—has been challenged by litigation, primarily based on the Second Amendment to the United States Constitution. Litigation against the San Jose and New Jersey laws remained pending as of the time of publication of this Report.

Three measures introduced during the 2023 Regular Session of the Hawaii State Legislature proposed an insurance requirement for owners of firearms. It would appear that any act that imposes such a requirement may face legal challenges similar to those described for San Jose, California, and New Jersey. For this reason, legislators may wish to consult the Attorney General or other legal counsel to consider all relevant legal issues relating to such legislation.

ENDNOTES

1. A "surety of the peace," "bond to keep the peace," or "peace bond," is a surety, bond, or other security to ensure "that a person will not commit a future offense." These sureties were "required of one against whom there are probable grounds to suspect future misbehavior." *See* BLACK'S LAW DICTIONARY 212-213, 1671 (10th ed. 2014) (defining "surety of the peace," "bond to keep the peace," and "peace bond").
2. The requirement does not apply to certain law enforcement officers, certain persons licensed to carry a concealed weapon, and certain persons for whom compliance would be a financial hardship.
3. California, Massachusetts, Minnesota, New Jersey, New York, North Carolina, South Carolina, Tennessee, and Vermont.
4. Pending before the legislature in Illinois.
5. Massachusetts, Michigan, Pennsylvania, Virginia, and Wisconsin.

Page intentionally left blank

Chapter 1

INTRODUCTION

The Legislative Reference Bureau (Bureau) prepared this Part I of this Report pursuant to House Concurrent Resolution No. 86, H.D. 1, S.D.1 (2023) (hereinafter H.C.R. No. 86).¹

ORIGIN OF THE REPORT

H.C.R. No. 86 made several assertions relating to firearms, including the following:

- The prevention of gun violence is an urgent matter of public health, safety, and welfare;
- The [United States] has seen numerous high-profile shootings over many decades;
- Hawaii has long been a leader in protecting the public from the serious risks of firearms and gun violence by implementing commonsense policies designed to protect the State's residents and communities, while also protecting the exercise of constitutional rights.

H.C.R. No. 86 also commented that:

- Although the United States Supreme Court has held that the Second Amendment provides for an individual right to keep and bear arms for lawful purposes, the Second Amendment is not "a regulatory straightjacket", *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2133 (2022), and states retain authority to enact "a 'variety' of gun regulations", *id.* at 2162 (Kavanaugh, J., concurring), to ensure that those who carry firearms are "law-abiding, responsible citizens", *id.* at 2131, 2156.

The Bureau notes that the number of concealed-carry firearm permits issued in the State has increased substantially following the *Bruen* decision. Historically, before 2022 (the year of the *Bruen* decision), such permits were rarely issued to private citizens in the State. For example, in 2021, while 124 out of 125 private security firms' employees' applications for concealed-carry permits were approved, only 2 of 17 private citizens' applications for such permits were approved.² In 2022, however, 213 of 236 private citizens' applications for concealed-carry permits were approved.³ As of October 20, 2023, 975 concealed-carry firearm permits have been issued in the City and County of Honolulu alone since the *Bruen* decision.⁴

In response to rising gun violence nationwide, H.C.R. No. 86 observed that legislation has recently been introduced or considered in a number of states, including Hawaii, that would establish systems of mandatory firearms insurance or other financial responsibility requirements.

H.C.R. No. 86 noted specifically that:

- In 2022, the City of San Jose [California] required residents who own or possess a firearm to obtain a homeowner's, renter's, or gun liability insurance policy covering losses or damages resulting from any accidental use of a firearm;
- In 2022, the State of New Jersey became the first state to require all persons licensed to carry a firearm to maintain and provide proof of liability insurance on account of injury, death, or damage to property arising out of ownership, maintenance, operation, or use of a firearm;
- Systems of insurance and other financial responsibility requirements can, in some contexts, play an important role by facilitating compensation for injured persons and reducing risks by encouraging safer behavior;
- Firearms insurance and other financial responsibility requirements pertaining to firearms are an important and rapidly evolving area of policy that is deserving of further study and consideration.

The Concurrent Resolution also observed that, while the idea of mandatory firearms *insurance* may be a new concept, "there is a long history in the United States of policies and legal frameworks designed to promote financial responsibility in connection with firearms, such as requirements relating to the posting of surety bonds."

SCOPE OF THE REPORT

Accordingly, H.C.R. No. 86 requested that the Bureau "summarize the relevant mandatory insurance laws of the State of New Jersey and the City of San Jose, and any similar insurance laws that other states may be enacting, as well as any current laws that impose other financial responsibilities on firearms."

H.C.R. No. 86 also requested that "as a part of the report, the Insurance Commissioner . . . provide an analysis of the types of firearm insurance policies offered in other states, which entities are offering those policies, and the pricing of those policies."

H.C.R. No. 86 further requested that the Bureau "submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2024."

ORGANIZATION OF THE REPORT

Part I of this Report responds to the Concurrent Resolution's request that the Bureau summarize the mandatory insurance laws of the State of New Jersey and the City of San Jose, any similar insurance laws enacted or being considered by other states, and any laws imposing other financial responsibilities on firearms.

Part II of this Report responds to the Concurrent Resolution's request that the Insurance Commissioner provide an analysis and other information concerning firearm insurance policies offered in other states. Part II was authored by the Insurance Commissioner and is presented herein as it was received by the Bureau.

THE BUREAU'S APPROACH TO PART I OF THE REPORT

The Bureau prepared Part I of this Report in accordance with the scope of its responsibilities under H.C.R. No. 86. Notably, the Bureau researched and examined the mandatory insurance laws of New Jersey and San Jose, California, and contacted relevant public officials in both jurisdictions for information about those laws and the status of their implementation. Further, with the assistance of the National Conference of State Legislatures, we identified and reviewed legislation proposed in other states that would require firearm owners and possessors to obtain firearm insurance, require insurance companies to provide such insurance, or require the study of firearm insurance coverage. However, the Bureau did not attempt to evaluate the feasibility of implementing laws requiring firearm insurance in Hawaii or determine whether firearm insurance laws would lead to a reduction in gun violence in the State. The Bureau also examined state laws that impose other financial responsibilities—specifically, surety requirements—on firearm owners.

ORGANIZATION OF PART I OF THE REPORT

The remaining chapters of Part I provide the following:

- (1) Chapter 2 summarizes relevant provisions of mandatory insurance laws of the City of San Jose, California, and the State of New Jersey and discusses the status of the enforcement of each of those laws;
- (2) Chapter 3 summarizes proposed legislation introduced in other states that would require firearm owners or possessors to obtain insurance; require insurance companies to offer such insurance; or require a study of the issue;
- (3) Chapter 4 discusses state laws that impose other financial requirements—specifically, surety requirements—upon firearm owners or possessors; and

- (4) Chapter 5 briefly summarizes the key points of Part I and discusses relevant measures introduced during the 2023 Regular Session of the Hawaii State Legislature.

ENDNOTES

1. H.C.R. No. 86 is attached as Appendix A.
2. PAUL PERRONE, CRIME PREVENTION & JUSTICE ASSISTANCE DIVISION, DEPARTMENT OF THE ATTORNEY GENERAL, STATE OF HAWAII, FIREARM REGISTRATIONS IN HAWAII, 2021, at 10 (2022), <https://ag.hawaii.gov/cpja/files/2022/08/Firearm-Registrations-in-Hawaii-2021.pdf>.
3. PAUL PERRONE, CRIME PREVENTION & JUSTICE ASSISTANCE DIVISION, DEPARTMENT OF THE ATTORNEY GENERAL, STATE OF HAWAII, FIREARM REGISTRATIONS IN HAWAII, 2022, at 9 (2023), <https://ag.hawaii.gov/cpja/files/2023/06/Firearm-Registrations-in-Hawaii-2022.pdf>. Although complete statistics for 2023 are not available, the number of concealed-carry firearm permits issued to individual citizens has further increased statewide. *See* Concealed-of Carry Firearm Permits Issued/Denied, Private Citizens, 2023 (Incomplete), attached as Appendix B.
4. This is the number of permits *See, e.g.,* Madeleine List, *Cops Want Guns Off The Streets. But Are Buyback Programs The Way?*, HONOLULU CIVIL BEAT (Oct. 20, 2023), <https://www.civilbeat.org/2023/10/cops-want-guns-off-the-streets-but-are-buyback-programs-the-way>.

Chapter 2

CURRENT FIREARM INSURANCE LAWS

This chapter summarizes "the relevant mandatory insurance laws of the State of New Jersey and the City of San Jose," as requested by H.C.R. No. 86.

SAN JOSE, CALIFORNIA

On March 11, 2022, the City of San Jose, California's Ordinance No. 30716 took effect.¹ The text of the ordinance cited various statistics to demonstrate that numerous injuries and deaths have resulted from the use of firearms.²

Relevant Insurance Provisions

Ordinance No. 30716 also declared that "insurance-based mechanisms can encourage firearm owners to take safety classes, use gun safes, install trigger locks, or utilize chamber-load indicators."³

New sections inserted into the San Jose Municipal Code by Ordinance No. 30716 include a finding that "[l]iability insurance can reduce the number of gun incidents by encouraging safer behavior and it can also provide coverage for losses and damages related to gun incidents."⁴

San Jose's amended Municipal Code now provides in relevant part that any person who "resides in the City [of San Jose] and owns or possesses a Firearm in the City shall obtain and continuously maintain in full force and effect a homeowner's, renter's or gun liability insurance policy . . . specifically covering losses or damages resulting from any accidental use of the Firearm, including but not limited to death, injury or property damage."⁵ The relevant section further states that, "Any person who owns a Firearm *on the effective date of this Section* shall obtain the insurance required by this Section within thirty (30) days of the effective date of this Ordinance, or by a later date certain established in the regulations promulgated by City Manager" [emphasis added]⁶ Thus, it would appear that the insurance mandate would apply to all firearm owners, including those who obtained their firearm before Ordinance No. 30716 took effect. The ordinance does not specify minimum coverage requirements.

Each person who is required to obtain the foregoing insurance must also demonstrate compliance by completing and executing a city-designated attestation form that includes, among other details, the name of the insurance company that issued the policy.⁷ The person is required to present the form when lawfully requested to do so by a law enforcement officer who knows or has reason to believe that the person possesses a firearm.⁸

The City of San Jose may enforce the foregoing provisions through citations, fines, civil and administrative remedies;⁹ impoundment "to the extent allowed by law";¹⁰ and fees and charges.¹¹ The current fines for violations of the insurance provisions are: \$250 for a first violation; \$500 for a second violation within a one-year period from the date of a previous

violation; and \$1,000 for a third or subsequent violation within one year from the date of a previous violation.¹² The City Manager also may promulgate regulations to implement the insurance requirements.¹³

The foregoing insurance requirements do not apply to:

- Certain law enforcement officers;¹⁴
- Certain persons licensed under California law to carry a concealed weapon,¹⁵ and
- Certain persons for whom compliance would create a financial hardship.¹⁶

Other Provisions

Language codified by Ordinance No. 30716 also requires any San Jose resident who owns or possesses a firearm in the City to pay an "Annual Gun Harm Reduction Fee," currently established at \$25.¹⁷ Collected funds are to be expended by a city-designated nonprofit organization to provide violence-prevention services to those same firearm owners.¹⁸ The applicable penalties for noncompliance and exceptions to compliance are the same as those relating to the ordinance's insurance requirements, as described above.¹⁹

Ordinance No. 30716 also contained a severability clause—language intended to preserve the enforcement of remaining portions of the ordinance in the event that a court determines that some provisions of the ordinance are invalid.²⁰

Status of the Law

At the time of publication of this Report, litigation challenging Ordinance No. 30716 remains pending,²¹ as discussed below.

The ordinance and its corresponding additions to San Jose's Municipal Code were intended to take effect 180 days after the ordinance's adoption.²² Pursuant to regulations issued by the City Manager, firearm owners residing in San Jose, unless exempt, were required to obtain liability insurance by January 1, 2023.²³

However, after the adoption of Ordinance No. 30716, plaintiffs filed claims against the City of San Jose in federal court, arguing that the ordinance's insurance requirement and the Annual Gun Harm Reduction Fee requirement violate the Second Amendment to the United States Constitution.²⁴ In September 2022, the United States District Court for the Northern District of California granted in part and denied in part the City's motion to dismiss the plaintiffs' claims.²⁵ In February 2023, the plaintiffs filed an amended complaint, and the City subsequently moved to dismiss the amended complaint.²⁶ In July 2023, the court granted the City's motion. The court determined that the insurance requirement was consistent with the nation's historical gun regulation traditions²⁷ and that the \$25 Annual Gun Harm Reduction Fee was not "exorbitant."²⁸ The court also addressed plaintiffs' claim that nonpayment of the fee would force gun owners to surrender their firearms to San Jose, therefore placing an unconstitutional condition on the right to bear arms.²⁹ The court noted that the relevant section of the ordinance "expressly states that its

impoundment provision may only apply "[to] the extent allowed by law."³⁰ The court also noted that "the City admits . . . that the section is inoperable because 'there is currently no lawful basis to impound firearms under state or federal law.' . . . And Plaintiffs allege this lack of authority to impound."³¹ Therefore, the court dismissed this claim.³²

Plaintiffs also claimed that requiring gun owners to pay the Annual Gun Harm Reduction Fee to a private nonprofit organization forces those owners to "associate with or support that private group and to fund their message" in violation of the First Amendment to the United States Constitution.³³ The court found that it had "no information as to what activities—and more critically what speech or expression, if any—the proceeds from the Fee would fund."³⁴ Further, the court ruled that because the City Manager had not yet "promulgated regulations identifying the Nonprofit's activities, the Court cannot determine if the Fee would fund any expressive activities and thereby remains unfit for judicial determination."³⁵ Accordingly, the court dismissed this claim for lack of ripeness, but granted plaintiffs leave to amend the claim, as plaintiffs "quite likely . . . will be able to plead this First Amendment claim once the City designates the Nonprofit" that will collect the fee.³⁶

In August 2023, plaintiffs appealed the lower court's decision to the United States Court of Appeals for the Ninth Circuit.³⁷ As of November 2023, the appeal was still pending.³⁸ The San Jose Police Department's website currently states that the ordinance's insurance requirement "is now being enforced" by the department.³⁹ However, the Bureau was unable to determine whether police have taken enforcement actions against any individuals for allegedly violating the insurance requirement.⁴⁰ The department's website also states that the Gun Harm Reduction Fee is not yet in effect, but that "the City has begun the implementation process and is actively seeking a nonprofit to collect the fee and provide services as defined in the ordinance via a Request for Proposals."⁴¹

At the time of publication of this Report, the Bureau is not aware of any study or assessment of the actual impact of San Jose's ordinance.⁴²

NEW JERSEY

On December 22, 2022, the State of New Jersey enacted P.L. 2022, Chapter 131 ("Act 131").⁴³ The Act was broad in scope and made numerous amendments to New Jersey Statutes relating to the regulation of firearms.

Relevant Insurance Provisions

Act 131 amended requirements for the issuance of permits to carry handguns. The Act requires every "private citizen"⁴⁴ who carries a handgun in public in the State of New Jersey to:

[M]aintain liability insurance coverage insuring against loss resulting from liability imposed by law for bodily injury, death, and property damage sustained by any person arising out of the ownership, maintenance, operation or use of a firearm carried in public wherein such coverage shall be at least in an amount or limit of \$300,000, exclusive of interest and costs, on account of injury to or death of more than one person and for damage to property, in any one incident.⁴⁵

An application for a permit to carry a handgun shall not be approved unless, among other requirements, the applicant has obtained liability insurance.⁴⁶ The insured person shall provide proof of this insurance "within a reasonable amount of time following any injury, death, or property damage alleged to have been caused by the person carrying the handgun in public."⁴⁷

Except with respect to certain government employees, law enforcement officers, and certain other parties acting in specifically authorized situations,⁴⁸ it is a crime in the fourth degree for a person in a public place to carry a concealed handgun without also carrying a valid permit to carry the gun and proof of insurance.⁴⁹ A crime in the fourth degree is punishable with imprisonment of up to 18 months⁵⁰ and a fine of up to \$10,000.⁵¹

Other Provisions

Language codified by Act 131 also included provisions to:

- Strengthen prohibitions on who may purchase a firearm, particularly with respect to individuals having certain histories relating to crime, mental health, and domestic violence;⁵²
- Explicitly prohibit the open carrying of firearms;⁵³
- Transfer permit-issuing authority from the courts to the police;⁵⁴
- Specify certain training requirements for persons applying for a permit to carry a handgun;⁵⁵
- Specify certain conduct requirements for holders of permits to carry handguns;⁵⁶
- Specify locations where the carrying of firearms is prohibited.⁵⁷

Act 131 also contained a severability clause.⁵⁸

Status of the Law

The insurance provisions of Act 131 were intended to take effect on July 1, 2023.⁵⁹ However, plaintiffs have challenged the law, claiming a deprivation of rights under the Second and Fourteenth Amendments to the United States Constitution.⁶⁰ Plaintiffs alleged that the relevant insurance requirements were "a costly and onerous obstacle to the exercise of the right to bear arms—one with no precedent in American history."⁶¹ Plaintiffs further claimed that the insurance requirements were inconsistent with the historical tradition of firearms regulation and that requiring insurance as a condition to the exercise of a constitutional right is unconstitutional.⁶²

In May of 2023, the United States District Court for the District of New Jersey issued a preliminary injunction against many provisions of Act 131, including the Act's insurance requirements.⁶³ The State of New Jersey sought a stay of the preliminary injunction, pending appeal.⁶⁴ On June 9, 2023, the United States Court of Appeals for the Third Circuit issued an

Order Granting the State's Unopposed Motion to Expedite the Appeal.⁶⁵ Oral argument was heard on October 25, 2023.⁶⁶

At the time of publication of this Report, the Bureau is unaware of any study or assessment of the actual impact of the New Jersey law.⁶⁷

ENDNOTES

1. The full title of the Ordinance is "An Ordinance of the City of San Jose Adding Part 6 to Chapter 10.32 of Title 10 of the San Jose Municipal Code to Reduce Gun Harm by Requiring Gun Owners to Obtain and Maintain Liability Insurance and Establishment of Annual Gun Harm Reduction Fee."
2. San Jose, Cal., Ordinance 30716 Unenumerated Introduction (Mar. 11, 2023).
3. *Id.*
4. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.200(B)(12).
5. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.210(A). Notably, California law requires an individual to obtain a license if the individual wishes to carry a pistol, revolver, or other firearm capable of being concealed upon the person. Cal. Penal Code §§ 25400(a) and 25655. Until recently, subsection (g) of Cal. Penal Code § 26190 prohibited any licensing authority from imposing, as part of the licensure process, a requirement that the applicant obtain liability insurance as a condition of the license application. It is unclear whether San Jose Ordinance No. 30716 was preempted by this prohibition on the requirement of insurance. However, on September 26, 2023, California enacted a law that in pertinent part amended Cal. Penal Code § 26190 to remove that prohibition. 2023 Cal. Legis. Serv. Ch. 249 (S.B. 2). This amendment allows licensing authorities to require that applicants for a permit to carry a firearm obtain liability insurance.
6. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.210(C).
7. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.230(A).
8. *Id.*
9. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.240.
10. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.245. Notably, this section may have no actual effect. *See infra* notes 29-32 and accompanying text.
11. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.250.
12. The fines, fees, and charges are set forth per schedules "established by resolution of the City Council." SAN JOSE, CAL., MUNICIPAL CODE §§ 10.32.240(B) and 10.32.250. The specific fine amounts referenced above were established by San Jose, Cal., Resolution 80714 (Oct. 18, 2022).

LAWS AND PENDING LEGISLATION REGARDING FIREARM INSURANCE
AND OTHER FINANCIAL RESPONSIBILITIES

13. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.235(A).
14. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.225(A).
15. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.225(B).
16. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.225(C). Pursuant to regulations issued by the City Manager, "[a]n individual qualifies for financial hardship if their household income is at or below the Extremely Low Income threshold for Santa Clara County, adjusted for household size, according to the Area Median Income (AMI) calculations released annually by the California Department of Housing and Community Development (HCD)." SAN JOSE, CAL., CITY MANAGER REGULATIONS FOR THE GUN HARM REDUCTION ORDINANCE § 4-3 (Oct. 21, 2022).
17. The fee is set forth in a schedule of fees and charges "established by resolution of the City Council." SAN JOSE, CAL., MUNICIPAL CODE § 10.32.215. The specific fee amount referenced above was established by San Jose, Cal., Resolution 80571 (Jun. 14, 2022).
17. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.235(A).
18. Services include suicide prevention services or programs; violence reduction or gender-based violence services or programs; addiction intervention and substance abuse treatment; mental health services related to gun violence; and firearm safety education or training. SAN JOSE, CAL., MUNICIPAL CODE § 10.32.220(A).
19. SAN JOSE, CAL., MUNICIPAL CODE §§ 10.32.225 to 10.32.250; San Jose, Cal., Resolution 80714 (Oct. 18, 2022).
20. San Jose, Cal., Ordinance 30716 § 3 (Mar. 11, 2023).
21. *See, e.g.* Cara Tabachnick, *Can Mandatory Liability Insurance for Gun Owners Reduce Violence? These Local Governments Think So*, CBS NEWS (June 9, 2023, 6:07 PM), <https://www.cbsnews.com/news/gun-owners-mandatory-liability-insurance-reduce-violence>.
22. San Jose, Cal., Ordinance 30716 § 2 (Mar. 11, 2023).
23. SAN JOSE, CAL., CITY MANAGER REGULATIONS FOR THE GUN HARM REDUCTION ORDINANCE § 2-1 (Oct. 21, 2022).
24. National Association for Gun Rights, Inc. v. City of San Jose, (No. 22-cv-00501-BLF), N.D. Cal. July 13, 2023.
25. Order Granting Defendants' Motion to Dismiss with Leave to Amend in Part and Without Leave to Amend in Part at 5, National Association for Gun Rights, Inc. v. City of San Jose, (No. 22-cv-00501-BLF), N.D. Cal. July 13, 2023 (internal citations omitted).
26. *Id.*
27. *Id.* at 13 (noting the standard pronounced in *New York State Rifle & Pistol Ass'n., Inc. v. Bruen*, 142 S.Ct. 2111 (2022), which is also discussed in Chapter 1, page 1 of this Report). The court

- dismissed this claim without granting plaintiffs leave to amend, as plaintiffs "already had an opportunity to amend, and the Court determines that further amendment would be futile" *Id.*
28. *Id.* at 14-15. The court dismissed this claim without granting plaintiffs leave to amend, as "amendment would be futile . . ." *Id.* at 15.
 29. *Id.* at 17.
 30. *Id.* at 19 (citing SAN JOSE, CAL., MUNICIPAL CODE § 10.32.245).
 31. *Id.* at 3 (internal citations omitted).
 32. *Id.* at 19. The court dismissed this claim without granting plaintiffs leave to amend, as the court had previously "granted leave to amend this claim" and the court determined "that further amendment would be futile" *Id.*
 33. *Id.* at 15.
 34. *Id.*
 35. *Id.*
 36. *Id.* at 16.
 37. Docketed Cause and Entered Appearances of Counsel, National Association For Gun Rights, Inc. v. City of San Jose, (No. 23-16091), 9th.Cir. Aug. 14, 2023.
 38. Appellants' opening brief was due November 20, 2023. Appellees' answering brief is due December 20, 2023. Appellants' optional reply brief is due twenty-one days after service of the answering brief. *Id.*
 39. *Gun Harm Reduction Ordinance*, SAN JOSE POLICE DEP'T (Sept. 22, 2023), <https://www.sjpd.org/records/documents-policies/gun-harm-reduction-ordinance> (last visited Nov. 20, 2023).
 40. In November 2023, the Bureau called the City Attorney's office and Police Department for the City of San Jose, in an attempt to obtain more information about the City's enforcement actions. Our efforts were unsuccessful.
 41. SAN JOSE POLICE DEP'T, *supra* note 39.
 42. In a telephone conversation on June 8, 2023, an official with the City Attorney's office for the City of San Jose expressed doubt that such a study reasonably could exist at this point.
 43. The full title of the Act is "An Act concerning the sale and possession of firearms and supplementing and amending various parts of the statutory law."
 44. Act 131 uses the term "private citizen," but neither the Act nor the New Jersey Statutes appear to define the term. However, the term appears intended to refer to individuals who are not law enforcement officers or governmental agents.

LAWS AND PENDING LEGISLATION REGARDING FIREARM INSURANCE
AND OTHER FINANCIAL RESPONSIBILITIES

45. N.J. Stat. Ann. § 2C:58-4.3(a) (West).
46. N.J. Stat. Ann. § 2C:58-4(c) and (d) (West).
47. N.J. Stat. Ann. § 2C:58-4.3(b) (West). Notably, information concerning the policy is not admissible as evidence at trial by reason of this mandated disclosure.
48. N.J. Stat. Ann. § 2C:39-6 (West).
49. N.J. Stat. Ann. §§ 2C:58-4.5(a) (West).
50. N.J. Stat. Ann. § 2C:43-6 (West).
51. N.J. Stat. Ann. § 2C:43-3 (West).
52. N.J. Stat. Ann. § 2C:58-3(c) (West).
53. N.J. Stat. Ann. § 2C:58-4(a) (West).
54. N.J. Stat. Ann. § 2C:58-4(d) (West).
55. N.J. Stat. Ann. § 2C:58-4(g) (West).
56. N.J. Stat. Ann. § 2C:58-4.4 (West).
57. N.J. Stat. Ann. § 2C:58-4.6 (West).
58. N.J. Stat. Ann. § 2C:58-4.9 (West).
59. 2022 NJ Sess. Law Serv. Ch. 131 § 12 (West).
60. Complaint for Declaratory and Injunctive Relief at 47-48, Siegel. v. Platkin, (No. 22-cv-7463), N.J., December 22, 2022.
61. *Id.* at 19.
62. *Id.* at 51.
63. Dana Difilippo, *Federal Judge Blocks More of New Jersey's New Gun Law*, N.J. MONITOR (May 16, 2023, 3:50 PM), <https://newjerseymonitor.com/2023/05/16/federal-judge-blocks-more-of-new-jerseys-new-concealed-carry-gun-law>.
64. *See, e.g.* Dana Difilippo, *State Appeals Federal Ruling Blocking Enforcement of New Gun Law*, N.J. MONITOR (May 23, 2023, 12:14 PM), <https://newjerseymonitor.com/2023/05/23/state-appeals-federal-ruling-blocking-enforcement-of-new-gun-law>.
65. Order (on motion to expedite) at 2, Koons v. Attorney General New Jersey (consolidated with Siegel v. Attorney General New Jersey), (No. 23-1900), 3rd.Cir. June 9, 2023.

66. Transcript of oral argument on 10/25/2023 prepared at the direction of the court, *Koons v. Attorney General New Jersey* (consolidated with *Siegel v. Attorney General New Jersey*), (No. 23-1900), 3rd.Cir. Nov. 8, 2023.
67. The Bureau made inquiries to several New Jersey public officials regarding the existence of any studies or assessments of Act 31. In a telephone conversation on June 13, 2023, an official in the Office of Attorney General commented that there has been less of an impact from the law itself, and more of an impact from the *Bruen* decision, which led to an increase in applications to carry firearms. The official also noted that the portion of the law that transferred permit-issuing duties from the courts to the police has not been stayed, so the law has reduced the courts' responsibilities in that respect.

Chapter 3

PROPOSED LEGISLATION IN OTHER STATES TO MANDATE FIREARM INSURANCE

This chapter responds to the request in H.C.R. No. 86 "to summarize . . . any similar insurance laws that other states may be enacting." Accordingly, the Bureau searched for bills in other states that: (1) would require firearm owners or possessors to obtain insurance; and (2) were introduced in a state legislature during the 2023 state legislative session and which may still be acted upon during a 2024 legislative session. With the assistance of the National Conference of State Legislatures, the Bureau has identified fourteen similar measures that have been introduced in ten states and meet this criteria. These are summarized below.

STATE MEASURES PROPOSING TO REQUIRE FIREARM INSURANCE

California

If enacted, S.B. 8, 2023 Reg. Sess. (Cal. 2023) would amend the state's insurance code to require each firearm owner to obtain and maintain insurance covering losses or damages resulting from the use of the owner's firearm, including death or injury to another and property damage. Each firearm owner would be required to keep valid and current written evidence of the coverage readily available at the location where each firearm is stored. The measure does not specify a penalty for violating the proposed law, and the state's insurance code does not appear to include a generally applicable penalty that could apply to violations of the proposed law. However, the measure would require the state's insurance commissioner to set minimum coverage requirements.

Illinois

If enacted, H.B. 1305, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023) would require the establishment of a task force to study existing and potential future firearm insurance coverage, analyze those costs, and make recommendations.

Massachusetts

If enacted, S.B. 1476, 193rd Gen. Ct., Reg. Sess. (Mass. 2023) or H.B. 2364, 193rd Gen. Ct., Reg. Sess. (Mass. 2023),¹ would impose (1) a fine of not less than \$500 nor more than \$5,000; (2) a term of imprisonment of not more than one year; or (3) both of the foregoing penalties upon anyone who possesses, carries, or owns a firearm without a liability policy, bond, or deposit. Each measure requires the state's commissioner on insurance to promulgate regulations setting forth minimum terms of insurance. Other than the penalties specified above, neither measure specifies how the state would ensure firearm owners' compliance with the proposed law.

Minnesota

If enacted, S.F. 1723, 93rd Session, Reg. Sess. (Minn. 2023), in pertinent part, would require a person who is applying for a permit to carry a pistol in public to obtain and continuously maintain liability insurance specifically covering any damages resulting from any negligent or willful acts involving the carrying of the firearm. The measure would also require a person to obtain liability insurance as part of a new proposed licensing requirement for owning or possessing any firearm and to continuously maintain insurance during the ownership of the firearm. The measure would require the submission of proof of insurance during the application process for (1) obtaining or renewing a permit to carry a pistol and (2) obtaining or renewing a license to own or possess a firearm. Under the measure, the state's commissioner of commerce is required to set minimum insurance coverage requirements. The measure would also require existing carry permit holders and firearm owners to obtain insurance; however, it does not specify how the state would ensure that existing firearm owners obtain insurance if those owners do not already have or do not seek carry permits.

New Jersey

If enacted, S. 3637, 220th Leg., Reg. Sess. (N.J. 2023) or A. 5238, 220th Leg., Reg. Sess. (N.J. 2023)² would require insurers to offer, as an option in every homeowners, renters, excess liability, or personal liability policy, coverage insuring against loss from liability for bodily injury, death, and property damage sustained by any person arising out of the ownership, maintenance, operation, or use of a firearm carried in public. Each measure would require minimum coverage for any one incident as follows, exclusive of interests and costs:

- \$100,000 for injury to or the death of one person;
- \$300,000 for injury to or the death of more than one person; provided that the coverage amount of \$100,000 remains for any one person; and
- \$25,000 for property damage.

New York

If enacted, S. 5902, 2023-2024 Reg. Sess. (N.Y. 2023) or A. 6652, 2023-2024 Reg. Sess. (N.Y. 2023)³ would require submission of proof of personal liability insurance as part of the process to apply for or renew any type of firearm license. Neither measure specifies coverage requirements.

North Carolina

If enacted, S.B. 210, 2023 Reg. Sess. (N.C. 2023) or H.B. 289, 2023 Reg. Sess. (N.C. 2023)⁴ would require any person who intends to own a firearm to obtain liability insurance in an amount not less than \$100,000 before owning the firearm and to maintain that liability insurance during the period of ownership. Each measure would also require existing owners of firearms to obtain insurance. Neither measure specifies any enforcement mechanism or penalty

for violations, and the North Carolina General Statutes do not appear to include a generally applicable penalty that could apply to violations of the proposed law. However, each measure requires the state's department of insurance to adopt rules to implement the proposed law.

South Carolina

If enacted, S. 224, Gen. Assemb., 125th Reg. Sess. (S.C. 2023) would require any South Carolina resident who owns or possesses a firearm to obtain and continuously maintain an insurance policy that covers losses or damages resulting from any negligent or accidental use of the firearm. Each firearm owner would be required to display proof of insurance upon demand by a law enforcement officer. A violator of the proposed law would be guilty of a misdemeanor and subject to no more than thirty days of imprisonment, a fine of \$1,000, or both. The measure does not specify coverage requirements.

Tennessee

If enacted, H.B. 1583, Gen. Assemb., 2023 Reg. Sess. (Tenn. 2023) would require any individual who resides in Tennessee and owns a firearm to maintain an insurance policy of no less than \$1,000,000 for losses or damages resulting from the use of the firearm. The firearm owner would be required to provide documentation of the issuance of the policy upon the request of any party that suffered loss or damage as a result from the use of the firearm. A violation of the proposed law would be a class C misdemeanor, punishable only by a fine of not more than \$300.

Vermont

If enacted, H. 520, 2023 Reg. Sess. (Vt. 2023) would require all firearm owners to obtain both a license to possess a firearm and an insurance card indicating that the owner has firearms liability insurance. This short form bill lacks further details regarding the insurance requirement.

ENDNOTES

1. Although it is not clear whether these measures are intended to be companion measures, they contain identical text.
2. Although it is not clear whether these measures are intended to be companion measures, they contain identical text. It should be noted that after January 10, 2024, the New Jersey Legislature will not be able to act on these measures. Its Legislature is constituted in a term of two annual sessions. The first annual session begins at noon on the second Tuesday in each even-numbered year. This session normally terminates at noon on the second Tuesday of the following odd-numbered year, at which time the second annual session commences. The second annual session normally terminates on the second Tuesday of the following even-numbered year. (Either annual session may be sooner terminated by adjournment sine die.) The state's constitution only

*PROPOSED LEGISLATION IN OTHER STATES
TO MANDATE FIREARM INSURANCE*

provides for a measure to carry over from the first annual session to the second annual session within a two-year term. *See* N.J. Const. art. IV, § 1, ¶ 3.

3. These are companion measures.
4. These are companion measures.

Chapter 4

OTHER STATES' FINANCIAL RESPONSIBILITY REQUIREMENTS

This chapter responds to the request in H.C.R. No. 86 "to summarize . . . any current laws that impose other financial responsibilities on firearms." Accordingly, the Bureau has summarized laws currently in effect in other states that impose relevant financial responsibilities on firearm owners or possessors, rather than firearm manufacturers or dealers.

The Bureau has identified three states having laws that authorize judges or magistrates to order individuals to obtain sureties to keep the peace¹ as a condition to be armed with a firearm or other dangerous weapon. We first describe these laws, often called "peace-bond statutes," and then describe each specific state statute. We also briefly note similar surety statutes that were repealed during the twentieth century.

SURETY STATUTES, GENERALLY

At common law, courts had the authority to order an individual, under certain circumstances, to give security against future breaches of the peace² by that individual.³ This procedure was referred to as a "proceeding for surety of the peace" or "peace-bond proceeding."⁴ Statutes that codified these common law procedures are sometimes called "peace-bond statutes."⁵

A typical proceeding under a surety or peace-bond statute is as follows:

- (1) A person makes a report to a magistrate, judge, or other person responsible for administering the law complaining that another person (the defendant) has threatened a breach of the peace, usually by alleging that the defendant has threatened bodily harm or property damage;
- (2) The magistrate may have the defendant arrested and brought before the magistrate for a hearing;
- (3) If, after the hearing, the magistrate determines that there is probable cause to believe that the defendant intends to commit the threatened offense, the magistrate may require the defendant to enter into a recognizance or post-monetary security, or a "peace bond," as a guarantee to keep the peace; and
- (4) If the defendant fails to provide the security, the defendant may be incarcerated until the security is posted or until the expiration of a statutory time limit.⁶

Generally, a person pledging security under a peace-bond proceeding was not viewed as being punished for a past act. Instead, the proceeding was seen as preventive justice, in which an individual for whom there was "probable ground to suspect future misbehavior" would be deterred from future acts of violence by pledging security.⁷

While many states' laws, including Hawaii's,⁸ include surety or peace-bond statutes, it is not clear whether they are commonly applied, if at all. Indeed, one law review article reviewed for this Report describes peace-bond statutes as "obscure and rarely applied."⁹

The Bureau has identified three states—Maine, Minnesota, and West Virginia—that have specific statutes authorizing judges to order an individual to obtain a peace bond as a condition to carry a firearm or other dangerous weapon. Two of these states—Maine¹⁰ and West Virginia¹¹—generally allow a person who is at least twenty-one years of age to carry a concealed firearm without a license or permit. In contrast, Minnesota requires that a person first obtain a permit from a county sheriff before carrying a concealed firearm.¹²

Descriptions of each of these states' peace-bond statutes follow.

SPECIFIC STATE LAWS

Maine

Section 292 of title 15, Maine Revised Statutes, which has been in effect since at least 1840,¹³ provides that a person who "goes armed with any dirk, pistol, or other offensive and dangerous weapon, without just cause to fear an assault on himself, family or property" may be required to obtain a peace bond.¹⁴ A petition to initiate a peace-bond proceeding may be filed by "any person having cause to fear an injury or breach of peace."¹⁵ Any justice of the Maine Superior Court or any judge of the Maine District Court may order a person to obtain a peace bond.¹⁶ The term of the order must be for less than one year.¹⁷

A person who does not comply with an order to obtain a peace bond may be "committed to jail for the time for which he was required to find sureties or until he complies with such order."¹⁸

Although section 292 does not expressly provide a right to appeal, other provisions of Maine law establish an appellate procedure for a person ordered to obtain a peace bond for general threats to breach the peace.¹⁹

Minnesota

Minnesota's peace-bond statute, which has been in effect since at least 1851,²⁰ provides that a person who goes "armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to person, family, or property" may be required to obtain a peace bond.²¹ A petition to initiate a peace-bond proceeding may be filed by "any other person having reasonable cause to fear an injury or breach of the peace."²² Any judge of the Minnesota district court may order a person to obtain a peace bond.²³ The requirement to obtain a peace bond shall not exceed a term of six months.²⁴

Although the statute does not specify a penalty for not complying with an order to obtain a peace bond as a condition to carry a weapon, other provisions of Minnesota law applicable to

peace bonds for general threats to breach the peace authorize judges to commit noncompliant individuals to the county jail for either the period for which the person was required to give security, or until the person obtains the peace bond.²⁵

A person subject to an order to obtain a peace bond may appeal the order.²⁶

West Virginia

West Virginia's peace-bond statute, which has been in effect since at least 1870,²⁷ provides that a person who goes "armed with a deadly, dangerous or prohibited weapon in violation of any of the provisions of article seven, chapter sixty-one of this Code" may be required to "give a recognizance."²⁸ Article seven of Chapter 61, West Virginia Code (relating to Dangerous Weapons), defines a "deadly weapon" to mean "an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use," including firearms, pistols, and revolvers.²⁹

Although the statute does not specify the process for initiating a peace-bond proceeding, other provisions of West Virginia law applicable to peace bonds for general threats to breach the peace provide for proceedings to begin when a complaint is made to a justice "that there is good cause to fear that a person intends to commit an offense against the person or property of another."³⁰ An order to obtain a peace bond may be issued by a magistrate court³¹ for a term not exceeding one year.³² A person who violates an order may be fined not more than \$250.³³

A person who is subject to an order to obtain a peace bond may appeal the order.³⁴

Similar Repealed Laws

States that previously had peace-bond statutes similar to those of Maine, Minnesota, and West Virginia, are: Massachusetts,³⁵ Michigan,³⁶ Pennsylvania,³⁷ Virginia,³⁸ and Wisconsin.³⁹ Each statute was repealed during the twentieth century. Several of the repeals occurred during large-scale recodifications or reforms of the respective state's criminal laws.⁴⁰ In the case of Virginia, the commission charged with recodifying state criminal laws noted that it did not recommend reenacting the portion of its peace-bond statute relating to firearms due to concerns that its language was "too comprehensive and would cover a lawful hunter," while also indicating that the law's purpose was "adequately covered"⁴¹ by another section of the peace-bond statute. The section in question currently provides:

If any person threatens to kill or injure another or to commit violence or injury against his person or property, or to unlawfully trespass upon his property, he shall be required to give a recognizance to keep the peace for such period not to exceed one year as the court or magistrate hearing the complaint may determine.⁴²

ENDNOTES

1. A "surety of the peace," "bond to keep the peace," or "peace bond," is a surety, bond, or other security to ensure "that a person will not commit a future offense." These sureties were "required of one against whom there are probable grounds to suspect future misbehavior." *See* BLACK'S LAW DICTIONARY 212-213, 1671 (10th ed. 2014) (defining "surety of the peace," "bond to keep the peace," and "peace bond").
2. A "breach of the peace" is the "criminal offense of creating a public disturbance or engaging in disorderly conduct[.]" BLACK'S LAW DICTIONARY 226 (10th ed. 2014).
3. *See* 4 ROBIN C. LARNER, INDIANA LAW ENCYCLOPEDIA § 2 (2023); *see also* 11 C.J.S. § 18 (2023).
4. *See* LARNER, *supra* note 3; *see also* 11 C.J.S. § 18 (2023).
5. *See* 11 C.J.S. § 18.
6. *See* Sidney Childress, *Peace Bonds—Ancient Anachronisms or Viable Crime Prevention Devices?* 21 AMERICAN JOURNAL OF CRIMINAL LAW 407, 408 (1994) (describing typical proceedings under most peace-bond statutes).
7. 11 C.J.S. § 18.
8. *See* HAWAII REVISED STATUTES §§ 804-31 to -41.
9. *See* Childress, *supra* note 6 at 408.
10. *See* MAINE REVISED STATUTES tit. 25, § 2001-A(2)(A-1) (providing that Maine's prohibition of carrying a concealed weapon does not apply to a person who is "21 years of age or older and is not otherwise prohibited from carrying a firearm").
11. *See* WEST VIRGINIA CODE § 61-7-3 (requiring persons under the age of 21 to obtain a permit to carry a deadly weapon); *see also* Act of March 5, 2016, ch. 252, 2016 West Virginia Acts 1867, 1869 (repealing the requirement that persons aged twenty-one years or older obtain a license to carry a deadly weapon). For an explanation of the term "deadly weapon," *see* note 29 and accompanying text, *infra*.
12. *See* MINNESOTA STATUTES § 624.714, subdivision 1a (providing that a person "who carries, holds, or possesses a pistol in a motor vehicle, snowmobile, or boat, or on or about the person's clothes or the person, or otherwise in possession or control in a public place . . . without first having obtained a permit to carry the pistol is guilty of a gross misdemeanor.")
13. A version of this law was included in a compilation of Maine statutes in effect as of October 22, 1840. *See* THE REVISED STATUTES OF THE STATE OF MAINE ch. 169, § 16 (1841).
14. MAINE REVISED STATUTES tit. 15, § 292.

LAWS AND PENDING LEGISLATION REGARDING FIREARM INSURANCE
AND OTHER FINANCIAL RESPONSIBILITIES

15. *Id.*
16. MAINE REVISED STATUTES tit. 15, § 281.
17. MAINE REVISED STATUTES tit. 15, § 292.
18. *See* MAINE REVISED STATUTES tit. 15, §§ 285, 292.
19. *See* MAINE REVISED STATUTES tit. 15, § 286.
20. A version of this statute was included in an 1851 compilation of Territory of Minnesota laws. *See* THE REVISED STATUTES OF THE TERRITORY OF MINNESOTA, ch. 112, § 18 (1851).
21. MINNESOTA STATUTES § 625.16.
22. *Id.*
23. MINNESOTA STATUTES § 625.01.
24. MINNESOTA STATUTES § 625.16.
25. *See* MINNESOTA STATUTES § 625.06.
26. MINNESOTA STATUTES § 625.16. *See also* MINNESOTA STATUTES § 625.11 (establishing procedures applicable to appeals of peace bonds orders).
27. A version of West Virginia's peace-bond statute was included in an 1870 compilation of West Virginia law. *See* THE CODE OF WEST VIRGINIA, ch. 153, § 8 (1870). According to the statutory history included in West's Annotated Code of West Virginia, this statute can be traced back to the 1849 Code of Virginia. *See* WEST VIRGINIA CODE ANNOTATED § 62-10-5 (West).
28. WEST VIRGINIA CODE § 62-10-5.
29. *See* WEST VIRGINIA CODE § 61-7-2(5).
30. *See* WEST VIRGINIA CODE § 62-10-2.
31. West Virginia's magistrate courts are "trial courts of limited jurisdiction," with the authority to issue arrest and search warrants, hear misdemeanor cases, hear civil cases with \$10,000 or less in dispute, and issue emergency domestic violence protective orders. *See Magistrate Courts*, WEST VIRGINIA JUDICIARY, <http://www.courtswv.gov/lower-courts/magistrate-courts.html> (last visited August 1, 2023).
32. *See* WEST VIRGINIA CODE § 62-10-1.
33. *Id.*
34. *See* WEST VIRGINIA CODE § 62-10-5. *See also* WEST VIRGINIA CODE § 62-10-4 (establishing procedures applicable to appeals of peace bonds orders).

OTHER STATES' FINANCIAL RESPONSIBILITY REQUIREMENTS

35. *See* MASSACHUSETTS GENERAL LAWS ch. 275, § 15 (1921) (repealed by Act of April 22, 1932, ch. 180, § 42, 1932 Massachusetts Acts 235, 247).
36. *See* MICHIGAN REVISED STATUTES ch. 162, § 16 (1846) (repealed by Act of June 2, 1927, No. 372, § 17, 1927 Michigan Public Acts 887, 893).
37. *See* 19 PENNSYLVANIA CONSOLIDATED STATUTES ANNOTATED § 23 (West 1964) (repealed by Act of April 28, 1978, Pennsylvania Laws 202, No. 53, § 2(a)).
38. *See* VIRGINIA CODE § 19.1-26 (1960) (repealed by 1975 Virginia Acts, ch. 495).
39. *See* WISCONSIN STATUTES § 962.18 (1967) (repealed by Act of November 25, 1969, ch. 255, § 55, 1969 Wisconsin Session Laws 602, 617).
40. *See, e.g.*, Act of November 25, 1969, ch. 255, 1969 Wisconsin Session Laws 602, 603 (prefatory note to session law noting the intent of the Act to provide for the "complete redraft of those statutes which deal with procedure in criminal cases").
41. REVISION OF TITLE 19.1 OF THE CODE OF VIRGINIA: REPORT OF THE VIRGINIA CODE COMMISSION TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA 6 (1975).
42. VIRGINIA CODE § 19.2-19.

Chapter 5

IN CONCLUSION: REVIEW, COMMENTS, AND OBSERVATIONS

H.C.R. No. 86 requested the Legislative Reference Bureau to summarize relevant mandatory insurance laws and proposed laws, and any current laws that impose other financial responsibilities in relation to firearms.

FINANCIAL RESPONSIBILITY LAWS AND BILLS, SUMMARIZED

Laws that attempt to impose broad, general requirements for gun owners or possessors to obtain *liability insurance* are relatively new. As discussed in chapter 2, only the City of San Jose, California, and the State of New Jersey currently have laws that impose such requirements: San Jose's law applies to owners or possessors of firearms generally, while New Jersey's law applies only to persons who carry handguns in public. Litigation challenging the San Jose ordinance was dismissed in July of this year. In pertinent part, a federal the court determined that the city's insurance requirements were consistent with historical gun regulation restrictions. However, the plaintiffs in that case have appealed the lower court's decision. Although the website of the San Jose Police Department states as of November 2023 that the ordinance's insurance requirement is being enforced, the Bureau was unable to determine whether police have taken enforcement actions against any individuals for allegedly violating the insurance requirement. Meanwhile, a preliminary injunction has been issued against relevant provisions of New Jersey's law, and the state is currently seeking a stay of the injunction, pending appeal. As discussed in Chapter 3, fourteen bills pending in other state legislatures (not including Hawaii) propose to establish or authorize similar insurance requirements or to study those types of requirements.

As discussed earlier in Chapter 4, several states in the past have enacted laws that authorize judges or magistrates to order an individual to obtain surety to keep the peace as a condition to being publicly armed with a firearm or other dangerous weapon. However, these surety laws have since been repealed in all but three states (Maine, Minnesota, and West Virginia). Further, these laws only apply if there is a specific allegation that the person has threatened breach of the peace and there is a finding, after a hearing, that there is probable cause to believe that the defendant actually intends to commit the threatened offense. Notably, it appears that these laws are rarely applied.

PENDING LEGISLATION IN HAWAII

The Bureau notes that three bills introduced during the 2023 Regular Session of the Hawaii State Legislature remain active and include language that proposes some type of insurance requirement for owners of firearms:

*IN CONCLUSION: REVIEW, COMMENTS,
AND OBSERVATIONS*

Senate Bill No. 1494 and House Bill No. 1166¹ - Either measure would amend the State's firearm law to require a person who applies for a permit to acquire a firearm to provide proof of coverage under a firearms insurance policy before a permit may be issued. Each policy would be required to cover liabilities for personal injury and property damage arising out of the possession or use of the applicant's firearm. Each measure also requires the owner of the firearm to renew the permit to acquire every five years—apparently even if the owner does not intend to acquire any additional firearms. However, neither measure specifically addresses the issue of applicability to individuals who either were issued permits to acquire before the effective date of the proposed law;² or already obtained firearms with permits that were issued before the effective date of the proposed law. We note that neither measure is made retroactive to permits or firearms acquired before the effective date. Therefore, it is unclear whether existing firearm owners would be required to "renew" the *permits to acquire* that they initially obtained when they lawfully acquired their firearms under then-existing firearm laws.

As part of the renewal process, the firearm owner is required to submit proof of insurance coverage. Each measure would exempt an owner from the new insurance requirements if applicable insurance coverage is not commercially available in the State. Neither measure specifies coverage requirements. As neither measure requires a firearm owner to *maintain* insurance coverage, and the measures only require proof of insurance during the initial application or renewal process, it is unclear whether any of the generally applicable penalties under existing state firearm law³ would apply if a person does not maintain such insurance. Notably, the measures themselves do not specify any penalties—other than the denial of the issuance or renewal of a permit—so it is unclear whether the measures' proponents intended for any criminal or civil penalties to apply.

Senate Bill No. 1282⁴ - This measure, in pertinent part, would require certain persons who carry firearms in public to maintain liability insurance coverage for bodily injury, death, or property damage sustained by any person arising out of the ownership, maintenance, operation, or use of those firearms while carried in public, with minimum liability coverage of not less than \$100,000 per person and not less than \$300,000 per occurrence.⁵ Following any incident involving injury, death, or property damage alleged to have been caused by the person carrying the firearm, the measure would require the person carrying the firearm to produce, "upon request," proof of the required coverage.⁶ The measure does not specify *who* may make the request. A person who violates any of the foregoing requirements would be guilty of a misdemeanor.⁷

As the foregoing measures carry over and may yet advance in the 2024 Regular Session, the Bureau has not included any additional proposed legislation in this Report. The Bureau notes that, if enacted, any measure that requires firearm insurance as a prerequisite to obtaining or carrying a firearm may face legal challenges based upon the Second Amendment. Accordingly, the Bureau respectfully suggests that legislators who wish to pursue such legislation consult the Attorney General or appropriate legal counsel to consider potential legal issues and challenges associated with such a proposal.

ENDNOTES

1. These are companion measures. No standing committee of the Legislature has held a hearing on either measure.
2. Under current law, a permit to acquire any pistol or revolver is void unless used within ten days of the date of issue. Section 134-2, HRS. For permits issued after January 1, 2024, this period will extend to thirty days. Act 52, Session Laws of Hawaii 2023. Permits to acquire a pistol or revolver require a separate application and permit for each transaction. Section 134-2, HRS. A permit issued to acquire any rifle or shotgun entitles the permittee to make subsequent purchases of rifles or shotguns for a period of one year from the date of issue without a separate application, unless the permittee becomes disqualified for owning or possessing a firearm or the permit is revoked. *Id.*
3. *See* section 134-17, HRS.
4. No standing committee of the Legislature has held a hearing on this measure.
5. *See* page 8, line 20, to page 9, line 7 of S.B. No. 1282.
6. *Id.* at page 9, lines 8-19.
7. *Id.* at page 53, lines 10-12. Under Hawaii law, a person who commits a misdemeanor faces a fine of no more than \$2,000, imprisonment for no longer than one year, or both. Sections 706-640 and 706-663, HRS.

P A R T I I

BY THE INSURANCE COMMISSIONER

Page intentionally left blank



JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA 'OIHANA PILI KĀLEPA
INSURANCE DIVISION

335 MERCHANT STREET, ROOM 213, HONOLULU, HAWAII 96813
P.O. BOX 3614, HONOLULU, HAWAII 96811
Phone Number: (808) 586-2790
Fax Number: (808) 587-6714
cca.hawaii.gov/ins/

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

GORDON I. ITO
INSURANCE COMMISSIONER

October 17, 2023

Jordon Higa
Legislative Reference Bureau
State of Hawaii
State Capitol, Room 446
415 South Beretania Street
Honolulu, HI 96813

Dear Mr. Higa:

RE: H.C.R. No. 86; Firearms Insurance Policies; Entities; Pricing

The Insurance Division, Department of Commerce and Consumer Affairs, provides the following response for the Hawaii Legislature report pursuant to House Concurrent Resolution No. 86, H.D. 1, S.D. 1 (2023) ("HCR86") which requests that the Insurance Commissioner furnish an analysis of the types of firearms insurance policies offered in other states, which entities are offering those policies, and the pricing of the policies.

The Insurance Division sent a survey letter to six-hundred (615) insurance companies of which five-hundred eighty-five (585) offer casualty insurance and four-hundred (454) offer surety insurance. Only one (1) company, Universal Fire and Casualty ("Universal"), offers firearm coverage in Hawaii. Universal requires a membership in order to purchase the coverage. There are three tiers of membership: Gold - \$29 a month; Platinum - \$39 a month; and Elite - \$49 a month. Universal's coverage limit is \$2,000,000 and has an included supplemental coverage of up to \$100,000 for the cost of bail bonds.¹

Additionally, the Insurance Division was made aware that, Lyndon Southern Insurance Company ("Lyndon") does not require a membership to purchase insurance. Lyndon is available in forty-two (42) states and the District of Columbia. Lyndon does not offer coverage in Alaska, Hawaii, Massachusetts, Minnesota, New Jersey, New York, Rhode Island, and Washington. Lyndon's pricing is as follows:

¹ We were unable to obtain the pricing of Universal's policies due to the membership requirement.

Insurance Limit	\$ 250,000	\$ 500,000	\$ 1,000,000	\$ 1,500,000
Sublimit - Defense reimbursements	\$ 50,000	\$ 100,000	\$ 150,000	\$ 250,000
Civil Liability settlements/judgements	\$ 250,000	\$ 500,000	\$ 1,000,000	\$ 1,500,000
Civil liability defense costs	\$ 250,000	\$ 500,000	\$ 1,000,000	\$ 1,500,000
Lost or stolen firearms liability	Included	Included	Included	Included
Annual Premium	\$ 75.00	\$ 125.00	\$ 175.00	\$ 265.00

Please contact us if you have any questions (808) 586-3040.

Sincerely,



Gordon I. Ito
Insurance Commissioner

APPENDIX A

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.C.R. NO. 86
H.D. 1
S.D. 1

HOUSE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO REPORT ON SYSTEMS
OF FIREARMS INSURANCE AND OTHER FINANCIAL RESPONSIBILITY
REQUIREMENTS PERTAINING TO FIREARMS.

1 WHEREAS, the prevention of gun violence is an urgent matter
2 of public health, safety, and welfare; and
3

4 WHEREAS, the country has seen numerous high profile
5 shootings over many decades; and
6

7 WHEREAS, Hawaii has long been a leader in protecting the
8 public from the serious risks of firearms and gun violence by
9 implementing commonsense policies designed to protect the
10 State's residents and communities, while also protecting the
11 exercise of constitutional rights; and
12

13 WHEREAS, although the United States Supreme Court has held
14 that the Second Amendment provides for an individual right to
15 keep and bear arms for lawful purposes, the Second Amendment is
16 not "a regulatory straightjacket", *New York State Rifle & Pistol*
17 *Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2133 (2022), and states
18 retain authority to enact "a 'variety' of gun regulations", *id.*
19 at 2162 (Kavanaugh, J., concurring), to ensure that those who
20 carry firearms are "law-abiding, responsible citizens", *id.* at
21 2131, 2156; and
22

23 WHEREAS, there is a long history in the United States of
24 policies and legal frameworks designed to promote financial
25 responsibility in connection with firearms, such as requirements
26 relating to the posting of surety bonds; and
27

28 WHEREAS, in recent years, legislation has been introduced
29 or considered in a number of states, including Hawaii, that
30 would establish systems of mandatory firearms insurance or other
31 financial responsibility requirements; and



1
2 WHEREAS, in 2022, the City of San Jose required residents
3 who own or possess a firearm to obtain a homeowner's, renter's,
4 or gun liability insurance policy covering losses or damages
5 resulting from any accidental use of a firearm; and
6

7 WHEREAS, in 2022, the State of New Jersey became the first
8 state to require all persons licensed to carry a firearm to
9 maintain and provide proof of liability insurance on account of
10 injury, death, or damage to property arising out of ownership,
11 maintenance, operation, or use of a firearm; and
12

13 WHEREAS, systems of insurance and other financial
14 responsibility requirements can, in some contexts, play an
15 important role by facilitating compensation for injured persons
16 and reducing risks by encouraging safer behavior; and
17

18 WHEREAS, firearms insurance and other financial
19 responsibility requirements pertaining to firearms are an
20 important and rapidly evolving area of policy that is deserving
21 of further study and consideration; now, therefore,
22

23 BE IT RESOLVED by the House of Representatives of the
24 Thirty-second Legislature of the State of Hawaii, Regular
25 Session of 2023, the Senate concurring, that the Legislative
26 Reference Bureau is requested to summarize the relevant
27 mandatory insurance laws of the State of New Jersey and the City
28 of San Jose, and any similar insurance laws that other states
29 may be enacting, as well as any current laws that impose other
30 financial responsibilities on firearms; and
31

32 BE IT FURTHER RESOLVED that as a part of the report, the
33 Insurance Commissioner is requested to provide an analysis of
34 the types of firearm insurance policies offered in other states,
35 which entities are offering those policies, and the pricing of
36 those policies; and
37

38 BE IT FURTHER RESOLVED that the Legislative Reference
39 Bureau is requested to submit a report of its findings and
40 recommendations, including any proposed legislation, to the
41 Legislature no later than twenty days prior to the convening of
42 the Regular Session of 2024; and
43



1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the Governor, Attorney
3 General, Director of Commerce and Consumer Affairs, Insurance
4 Commissioner, and Director of the Legislative Reference Bureau.



APPENDIX B

**Concealed-Carry Firearm Permits Issued/Denied,
Private Citizens, 2023 (Incomplete)**

	Honolulu		Hawaii Island		Maui		Kauai		Statewide	
	Issued	Denied	Issued	Denied	Issued	Denied	Issued	Denied	Issued	Denied
Jan	24	0	46	10	23	5	34	0	127	15
Feb	22	0	60	2	0	0	18	0	100	2
Mar	35	0	0	0	31	7	26	1	92	8
Apr	75	0	24	0	0	0	55	0	154	0
May	116	0	3	1	*	*	31	0	150#	1#
Jun	49	0	31	0	0	0	39	0	119	0
Jul	166	0	0	0	49	6	6	0	221	6
Aug	460	0	1	0	0	0	15	0	476	0
Sept	*	*	33	0	*	*	22	0	55#	0#
TOTAL#	947#	0#	198	13	103#	18#	246	1	1494#	32#

Source: October 24, 2023 Telephone Call with Paul Perrone, Crime Prevention & Justice Assistance Division, Department of the Attorney General, State of Hawaii

*Data Not Available

#Totals Do Not Include Months for Which Data is Not Available