

A Bill for an Act Relating to Firearms and Dangerous Weapons.

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

SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§663- Liability of firearm owners. The owner of a firearm, if the discharge of the firearm proximately causes either personal injury or property damage to any person, shall be absolutely liable for such damage. It shall be an affirmative defense to such absolute liability that the firearm was not in the possession of the owner and was taken from the owner’s possession without the owner’s permission and the owner either had reported the theft to the police prior to the discharge or, despite the exercise of reasonable care, had not discovered the theft prior to the discharge or was not reasonably able to report the theft to the police prior to the discharge. This section shall not apply when the discharge of the firearm was legally justified.”

SECTION 2. Section 134-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Firearm loaded with ammunition” and “loaded firearm” means a firearm with ammunition present within the firing chamber, revolving cylinder, or within a magazine which is inserted in a firearm.

“Public highway” shall have the same meaning as defined in section 264-1(a).”

SECTION 3. Section 134-2, Hawaii Revised Statutes, is amended to read as follows:

“§134-2 Permits to acquire. (a) No person shall acquire the ownership of a firearm, whether usable or unusable, serviceable or unserviceable, modern or antique, registered under prior law or by a prior owner or unregistered, either by purchase, gift, inheritance, bequest, or in any other manner, whether procured in the State or imported by mail, express, freight, or otherwise, until the person has first procured from the chief of police of the county of the person’s place of business or, if there is neither place of business,¹ nor residence or, if there is no place of business, the person’s residence, the person’s place of sojourn, a permit to acquire the ownership of a firearm as prescribed in this section; provided that when title to any firearm is acquired by inheritance or bequest, the foregoing permit shall be obtained before taking possession of a firearm.

(b) The permit application form shall include the applicant’s name, address, sex, height, weight, date of birth, place of birth, [social security] Social Security number, and information regarding the applicant’s mental health history and shall require the fingerprinting and photographing of the applicant by the police department of the county of registration; provided that where fingerprints and photograph are already on file with the department, these may be waived.

(c) An applicant for a permit shall sign a waiver at the time of application, allowing the chief of police of the county issuing the permit access to any records that have a bearing on the mental health of the applicant. The permit application

form and the waiver form shall be prescribed by the attorney general and shall be uniform throughout the State.

(d) The chief of police of the respective counties may issue permits to acquire firearms to citizens of the United States of the age of [eighteen] twenty-one years or more, or duly accredited official representatives of foreign nations, or duly commissioned law enforcement officers of the State who are aliens; provided that any law enforcement officer who is the owner of a firearm and who is an alien shall transfer ownership of the firearm within forty-eight hours after termination of employment from a law enforcement agency. The chief of police of each county may issue permits to aliens of the age of eighteen years or more for use of rifles and shotguns for a period not exceeding sixty days, upon a showing that the alien has first procured a hunting license under chapter 183D, part II. The chief of police of each county may issue permits to aliens of the age of twenty-one years or more for use of firearms for a period not exceeding six months, upon a showing that the alien is in training for a specific organized sport-shooting contest to be held within the permit period. The attorney general shall adopt rules, pursuant to chapter 91, as to what constitutes sufficient evidence that an alien is in training for a sport-shooting contest.

(e) The permit application form shall be signed by the applicant and by the issuing authority. One copy of the permit shall be retained by the issuing authority as a permanent official record. Except for sales to dealers licensed under section 134-31, or dealers licensed by the United States Department of the Treasury, or law enforcement officers, or where a license is granted under section 134-9, or where any firearm is registered pursuant to section 134-3(a), no permit shall be issued to [a first time] an applicant earlier than fourteen calendar days after the date of the application; provided that a permit shall be issued or the application denied before the twentieth day from the date of application. [Persons who have previously obtained permits subject to the waiting period required by this subsection and who make a subsequent application within one year of the issue date of the first permit may be issued permits in less than fourteen days.] Permits issued to acquire any pistol or revolver shall be void unless used within ten days after the date of issue. Permits to acquire a pistol or revolver require a separate application and permit for each transaction. Permits issued to acquire any rifle or shotgun shall entitle 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 and permit for each acquisition, subject to the disqualifications under section 134-7[.] and subject to revocation under section 134-13: provided that if a permittee is arrested for committing a felony or any crime of violence or for the illegal sale of any drug, the permit shall be impounded and shall be surrendered to the issuing authority.

(f) In all cases where a pistol or revolver is acquired from another person within the State, the permit shall be signed in ink by the person to whom title to the pistol or revolver is transferred and shall be delivered to the person who is transferring title to the firearm, who shall verify that the person to whom the firearm is to be transferred is the person named in the permit and enter on the permit in the space provided the following information: name of the person to whom the title to the firearm was transferred; names of the manufacturer and importer; model; type of action; caliber or gauge; and serial number as applicable. The person who is transferring title to the firearm shall sign the permit in ink and cause the permit to be delivered or sent by registered mail to the issuing authority within forty-eight hours after transferring the firearm.

In all cases where receipt of a firearm is had by mail, express, freight, or otherwise from sources without the State, the person to whom the permit has been

issued shall make the prescribed entries on the permit, sign the permit in ink, and cause the permit to be delivered or sent by registered mail to the issuing authority within forty-eight hours after taking possession of the firearm.

In all cases where a rifle or shotgun is acquired from another person within the State, the person who is transferring title to the rifle or shotgun shall submit, within forty-eight hours after transferring the firearm, to the authority which issued the permit to acquire, the following information, in writing: name of the person who transferred the firearm, name of the person to whom the title to the firearm was transferred; names of the manufacturer and importer; model; type of action; caliber or gauge; and serial number as applicable.

(g) Effective July 1, 1995, no person shall be issued a permit under this section for the acquisition of a pistol or revolver unless the person, at any time prior to the issuance of the permit, has completed:

- (1) An approved hunter education course as authorized under section 183D-28;
- (2) A firearms safety or training course or class available to the general public offered by a law enforcement agency of the State or of any county;
- (3) A firearms safety or training course offered to law enforcement officers, security guards, investigators, deputy sheriffs, or any division or subdivision of law enforcement or security enforcement by a state or county law enforcement agency; or
- (4) A firearms training or safety course or class conducted by a state certified or National Rifle Association certified firearms instructor that provides, at a minimum, a total of at least three hours of firing training at a firing range and a total of at least three hours of classroom instruction, which may include a video, that focuses on:
 - (A) The safe use, handling, and storage of firearms and firearm safety in the home; and
 - (B) Education on the firearm laws of the State.

An affidavit signed by the certified firearms instructor who conducted or taught the course, providing the name, address, and phone number of the instructor and attesting to the successful completion of the course by the applicant shall constitute evidence of certified successful completion under this paragraph.

[(g)] (h) No person shall sell, give, lend, or deliver into the possession of another any firearm except in accordance with this chapter.

[(h)] (i) No fee shall be charged for permits under this section."

SECTION 4. Section 134-3, Hawaii Revised Statutes, is amended to read as follows:

"§134-3 Registration, mandatory, exceptions. (a) Every person arriving in the State who brings or by any other manner causes to be brought into the State a firearm of any description, whether usable or unusable, serviceable or unserviceable, modern or antique, shall register the firearm within three days after arrival of the person or of the firearm, whichever arrives later, with the chief of police of the county of the person's place of business or, if there is no place of business, such person's residence or, if there is neither a place of business nor residence, the person's place of sojourn; provided that no alien shall be allowed to bring a firearm of any description into the State.

(b) Every person who acquires a [pistol or revolver] firearm pursuant to section 134-2 shall register the [pistol or revolver] firearm in the manner prescribed by this section within five days of acquisition. The registration shall be on

forms prescribed by the attorney general, which shall be uniform throughout the State, and shall include the following information: name of the manufacturer and importer; model; type of action; caliber or gauge; serial number; and source from which receipt was obtained, including the name and address of the prior registrant. If the firearm has no serial number, the permit number shall be entered in the space provided for the serial number, and the permit number shall be engraved upon the receiver portion of the firearm prior to registration. All registration data that would identify the individual registering the firearm by name or address shall be confidential and shall not be disclosed to anyone, except as may be required for processing the registration or as may be required by a law enforcement agency for the lawful performance of its duties or as may be required by order of a court.

(c) Dealers licensed under section 134-31 or dealers licensed by the United States Department of the Treasury shall register firearms pursuant to this section on registration forms prescribed by the attorney general and shall not be required to have the firearms physically inspected by the chief of police at the time of registration.

(d) Registration shall not be required for:

- (1) Any device that is designed to fire loose black powder[;] or that is a firearm manufactured before 1899;
- (2) Any device not designed to fire or made incapable of being readily restored to a firing condition; or
- (3) All unserviceable firearms and destructive devices registered with the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury pursuant to Title 27, Code of Federal Regulations.

(e) No fee shall be charged for the registration."

SECTION 5. Section 134-6, Hawaii Revised Statutes, is amended to read as follows:

"§134-6 Carrying or use of firearm in the commission of a separate felony; place to keep firearms; loaded firearms; penalty. (a) It shall be unlawful for a person to knowingly carry on the person or have within the person's immediate control or intentionally use or threaten to use a firearm while engaged in the commission of a separate felony, whether the firearm was loaded or not, and whether operable or not; provided that a person shall not be prosecuted under this subsection where the separate felony is:

- (1) A felony offense otherwise defined by this chapter;
- (2) The felony offense of reckless endangering in the first degree under section 707-713;
- (3) The felony offense of terroristic threatening in the first degree under section 707-716(a), 707-716(b), and 707-716(d); or
- (4) The felony offenses of criminal property damage in the first degree under section 708-820 and criminal property damage in the second degree under section 708-821 and the firearm is the instrument or means by which the property damage is caused.

(b) It shall be unlawful for a person to knowingly possess a firearm with the intent to facilitate the commission of a felony offense involving the distribution of a controlled substance, whether the firearm was loaded or not, and whether operable or not.

(c) Except as provided in sections 134-5 and 134-9, all firearms and ammunition shall be confined to the possessor's place of business, residence, or

sojourn; provided that it shall be lawful to carry unloaded firearms or ammunition or both in an enclosed container from the place of purchase to the purchaser's place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following: a place of repair; a target range; a licensed dealer's place of business; an organized, scheduled firearms show or exhibit; a place of formal hunter or firearm use training or instruction; or a police station. "Enclosed container" means a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the firearm.

(d) It shall be unlawful for any person on any public highway to carry on the person, or to have in the person's possession, or to carry in a vehicle any firearm loaded with ammunition; provided that [the provision of] this [paragraph] subsection shall not apply to any person who has in the person's possession or carries a pistol or revolver and ammunition therefor in accordance with a license issued as provided in section 134-9.

(e) Any person violating subsection (a) or (b) shall be guilty of a class A felony. Any person violating this section by carrying or possessing a loaded firearm or by carrying or possessing a loaded or unloaded pistol or revolver without a license issued as provided in section 134-9 shall be guilty of a class B felony. Any person violating this section by carrying or possessing an unloaded firearm, other than a pistol or revolver, shall be guilty of a class C felony.

(f) Any vehicle used in the commission of an offense under subsection (d) shall be forfeited to the State, subject to the notice and hearing requirements of chapter 712A.

[(f)] (g) For the purposes of this section:

"Controlled substance" shall be as defined in section 329-1.

"Distribution" means the selling, transferring, prescribing, giving, or delivering to another, or the leaving, bartering, or exchanging with another, or the offering or agreeing to do the same."

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

"(c) No person who:

- (1) Is or has been under treatment or counseling for addiction to, abuse of, or dependence upon any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, or intoxicating liquor;
- (2) Has been committed pursuant to section 333F-9 or 333F-10;
- (3) Has been acquitted of a crime on the grounds of mental disease, disorder, or defect pursuant to section 704-411; or
- (4) Is or has been [under treatment for] diagnosed as having a significant behavioral, emotional, or mental disorders as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes;

shall own, possess, or control any firearm or ammunition therefor, unless the person has been medically documented to be no longer adversely affected by the addiction, abuse, dependence, mental disease, disorder, or defect."

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

"(f) No person who has been restrained pursuant to an order of any court,

[other than an order issued ex parte,] including an ex parte order as provided for herein, from contacting, threatening, or physically abusing any person, shall possess or control any firearm or ammunition therefor, so long as the protective order or any extension thereof is in effect, unless the order, for good cause shown, specifically permits the possession of a firearm and ammunition. The restraining order or order of protection shall specifically include a statement that possession or control of a firearm or ammunition by the person named in the order is prohibited. Such person shall relinquish possession and control of any firearm and ammunition owned by that person to the police department of the appropriate county for safekeeping for the duration of the order or extension thereof. In the case of an ex parte order, the affidavit or statement under oath which forms the basis for the order shall contain a statement of the facts which support a finding that the person to be restrained owns, intends to obtain, or possesses a firearm, and that the firearm may be used to threaten, injure or abuse any person. The ex parte order shall be effective upon service pursuant to section 586-6. At the time of service of a restraining order involving firearms and ammunition issued by any court, the police officer may take custody of any and all firearms and ammunition in plain sight, those discovered pursuant to a consensual search, and those firearms surrendered by the person restrained. If the person restrained is the registered owner of a firearm and knows the location of the firearm but refuses to surrender the firearm or refuses to disclose the location of the firearm, the person restrained shall be guilty of a misdemeanor. In any case, when a police officer is unable to locate the firearms and ammunition either registered under this chapter or known to the person granted protection by the court, the police officer shall apply to the court for a search warrant pursuant to chapter 803 for the limited purpose of seizing the firearm and ammunition."

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

"(a) In an exceptional case, when an applicant shows reason to fear injury to the applicant's person or property, the chief of police of the appropriate county may grant a license to an applicant who is a citizen of the United States of the age of [twenty] twenty-one years or more or to a duly accredited official representative of a foreign nation of the age of [twenty] twenty-one years or more to carry a pistol or revolver and ammunition therefor concealed on the person within the county where the license is granted. Where the urgency or the need has been sufficiently indicated, the respective chief of police may grant to an applicant of good moral character who is a citizen of the United States of the age of [twenty] twenty-one years or more, is engaged in the protection of life and property, and is not prohibited under section 134-7 from the ownership or possession of a firearm, a license to carry a pistol or revolver and ammunition therefor unconcealed on the person within the county where the license is granted. Unless renewed, the license shall expire one year from the date of issue."

SECTION 9. Section 134-17, Hawaii Revised Statutes, is amended to read as follows:

"§134-17 Penalties. (a) If any person gives false information or offers false evidence of the person's identity in complying with any of the requirements of this part, that person shall be guilty of a misdemeanor[.], provided, however that if any person intentionally gives false information or offers false evidence

concerning their psychiatric or criminal history in complying with any of the requirements of this part, that person shall be guilty of a class C felony.

(b) Any person who violates section 134-3(a) shall be guilty of a petty misdemeanor.

(c) Any person who violates section 134-2, [134-3(b),] 134-4, 134-10, 134-15, or 134-16(a) shall be guilty of a misdemeanor. Any person who violates section 134-3(b) shall be guilty of a petty misdemeanor and the firearm shall be confiscated as contraband and disposed of, if the firearm is not registered within five days of the person receiving notice of the violation."²

SECTION 10. Section 134-18, Hawaii Revised Statutes, is amended to read as follows:

"[§134-18] Qualified immunity for physicians, psychologists,³ or psychiatrists who provide information on permit applicants. There shall be no civil liability for any physician, psychologist or psychiatrist who provides information or renders an opinion in response to an inquiry made for purposes of issuing a firearm permit under section 134-2[,] or for purposes of investigating the continuing mental health of the holder of a valid firearm permit provided that the physician, psychologist, or psychiatrist acted without malice."

SECTION 11. Section 134-32, Hawaii Revised Statutes, is amended to read as follows:

"§134-32 License to sell and manufacture firearms; conditions. Every license issued pursuant to this part shall be issued and shall be regarded as having been accepted by the licensee subject to the following conditions:

- (1) That the licensee at all times shall comply with all provisions of law relative to the sale of firearms.
- (2) That the license during any time of national emergency or crisis, as defined in section 134-34, may be canceled or suspended.
- (3) That all firearms in the possession and control of any licensee at any time of national emergency or crisis, as defined in section 134-34, may be seized and held in possession or purchased by or on the order of the governor until such time as the national emergency or crisis has passed, or until such time as the licensee and the government of the United States or the government of the State may agree upon some other disposition of the same.
- (4) That all firearms in the possession and control of the licensee or registered pursuant to section 134-3(c) by the licensee shall be subject to physical inspection by the chief of police of each county during normal business hours at the licensee's place of business.
- (5) That the license may be revoked for a violation of any of the conditions of this section."

SECTION 12. The department of the attorney general shall act as the lead agency in the planning and implementation of a firearms amnesty program through the county police departments pursuant to this part. The program shall provide that any person may turn in one or more unwanted firearms to the county police department and receive an incentive. The attorney general shall work with the various state departments and the counties, and shall seek the cooperation and participation of private agencies and enterprises, to create a package of incentives to encourage the surrender of firearms. The amnesty program shall not apply to

firearms described in section 134-3(d).

The attorney general shall submit a report to the legislature not less than twenty days prior to the convening of the regular session of 1995 as to the statutes which need to be adopted to accomplish the purposes of this section, including legislative proposals to address amnesty with respect to Chapter 134 for those who turn in firearms.

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

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.⁴

SECTION 15. This Act shall take effect on July 1, 1994.

(Approved June 21, 1994.)

Notes

1. So in original.
2. Prior to amendment, section was comprised of subsections (a) to (d).
3. Comma should be underscored.
4. Edited pursuant to HRS §23G-16.5.