

ACT 66

H.B. NO. 877

A Bill for an Act Relating to Crime.

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

SECTION 1. Chapter 134, Hawaii Revised Statutes, is amended by adding seven new sections to be appropriately designated and to read as follows:

“§134-A Carrying or use of firearm in the commission of a separate felony; 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 when 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(1)(a), 707-716(1)(b), or 707-716(1)(d); or
- (4) The felony offenses of criminal property damage in the first degree under section 708-820 or 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) A conviction and sentence under this section shall be in addition to and not in lieu of any conviction and sentence for the separate felony; provided that the sentence imposed under this section may run concurrently or consecutively with the sentence for the separate felony.

(c) Any person violating this section shall be guilty of a class A felony.

§134-B Possession of a firearm with intent to facilitate the commission of a felony drug offense; penalty. (a) 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.

(b) For the purposes of this section:

“Controlled substance” shall have the same meaning 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.

(c) A conviction and sentence under this section shall be in addition to and not in lieu of any conviction and sentence for the separate felony; provided that the sentence imposed under this section may run concurrently or consecutively with the sentence for the separate felony.

(d) Any person violating this section shall be guilty of a class A felony.

§134-C Place to keep loaded firearms other than pistols and revolvers; penalty. (a) Except as provided in section 134-5, all firearms shall be confined to the possessor’s place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms 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:

- (1) A place of repair;

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

(b) Any person violating this section by carrying or possessing a loaded firearm other than a pistol or revolver shall be guilty of a class B felony.

§134-D Place to keep unloaded firearms other than pistols and revolvers; penalty. (a) Except as provided in section 134-5, all firearms shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms 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:

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

(b) 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.

§134-E Place to keep pistol or revolver; penalty. (a) Except as provided in sections 134-5 and 134-9, all firearms shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms 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:

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

(b) Any person violating this section by carrying or possessing a loaded or unloaded pistol or revolver shall be guilty of a class B felony.

§134-F Carrying or possessing a loaded firearm on a public highway; penalty. (a) 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 this section shall not apply to any person who has in the person's possession or carries a pistol or revolver in accordance with a license issued as provided in section 134-9.

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

(c) Any person violating this section shall be guilty of a class B felony.

§134-G Place to keep ammunition; penalty. (a) Except as provided in sections 134-5 and 134-9, all ammunition shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry ammunition 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:

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

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

(b) Any person violating this section shall be guilty of a misdemeanor."

SECTION 2. Section 134-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A person may carry unconcealed and use a lawfully acquired pistol or revolver while actually engaged in hunting game mammals, if that pistol or revolver and its suitable ammunition are acceptable for hunting by rules adopted pursuant to section 183D-3 and if that person is licensed pursuant to part II of chapter 183D. The pistol or revolver may be transported in an enclosed container, as defined in section [134-6(e);] 134-E in the course of going to and from the place of the hunt, notwithstanding section [134-6(d);] 134-F."

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

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

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

1. By amending subsection (a) to read:

"(a) Sections [134-6] 134-A to 134-G and 134-7 to 134-9, except section 134-7(f), shall not apply:

- (1) To state and county law enforcement officers; provided that such persons are not convicted of an offense involving abuse of a family [H]or[F] household member under section 709-906;
- (2) To members of the armed forces of the State and of the United States and mail carriers while in the performance of their respective duties if those duties require them to be armed;
- (3) To regularly enrolled members of any organization duly authorized to purchase or receive the weapons from the United States or from the

State[;]; provided the members are either at, or going to or from, their places of assembly or target practice;

- (4) To persons employed by the State, or subdivisions thereof, or the United States while in the performance of their respective duties or while going to and from their respective places of duty if those duties require them to be armed;
- (5) To aliens employed by the State, or subdivisions thereof, or the United States while in the performance of their respective duties or while going to and from their respective places of duty if those duties require them to be armed; and
- (6) To police officers on official assignment in Hawaii from any state which by compact permits police officers from Hawaii while on official assignment in that state to carry firearms without registration. The governor of the State or the governor's duly authorized representative may enter into compacts with other states to carry out this paragraph."

2. By amending subsection (c) to read:

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

SECTION 5. Section 806-83, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Criminal charges may be instituted by written information for a felony when the charge is a class C felony under section 19-3.5 (voter fraud); section 128D-10 (knowing releases); [H]¹section 132D-14(a)(1), (2)(A), and (3)[H],² (penalties for failure to comply with requirements of sections 132D-7, 132D-10 and 132D-16); section [134-6 (~~carrying or use of firearm in the commission of a separate felony~~);] 134-D (place to keep unloaded firearms other than pistols and revolvers); section 134-7(a) and (b) (ownership or possession prohibited); section 134-8 (prohibited ownership); section 134-9 (licenses to carry); section 134-17(a) (relating to false information or evidence concerning psychiatric or criminal history); section 134-51 (deadly weapons); section 134-52 (switchblade knives); section 134-53 (butterfly knives); section 188-23 (possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited); section 231-34 (attempt to evade or defeat tax); section 231-36 (false and fraudulent statements); section 245-37 (sale or purchase of packages of cigarettes without stamps); section 245-38 (vending unstamped cigarettes); section 245-51 (sale of export cigarettes prohibited); section 245-52 (alteration of packaging prohibited); section 291C-12.5 (accidents involving substantial bodily injury); section 291E-61.5 (habitually operating a vehicle under the influence of an intoxicant); section 329-41 (prohibited acts B); section 329-42 (prohibited acts C); section 329-43.5 (prohibited acts related to drug paraphernalia); section 329C-2 (manufacture, distribution, or possession with intent to distribute an imitation controlled substance to a person under eighteen years of age); section 346-34(d)(2) and (e) (fraud involving food stamps or coupons with a value exceeding \$300); section 346-43.5 (medical assistance fraud); section 383-141 (falsely obtaining benefits); section 431:10C-307.7 (insurance fraud); section 482D-7 (violation of fitness standards and stamping requirements); section 485-8 (registration of securities); section 485-14 (registration of dealers, investment advisers, salespersons, and investment adviser representatives); section 485-25 (fraudulent and other prohibited practices); section 707-703 (negligent homicide in the second degree); section 707-705 (negligent injury

in the first degree); section 707-711 (assault in the second degree); section 707-713 (reckless endangering in the first degree); section 707-721 (unlawful imprisonment in the first degree); section 707-726 (custodial interference in the first degree); section 707-757 (electronic enticement of a child in the second degree); section 707-766 (extortion in the second degree); section 708-811 (burglary in the second degree); section 708-821 (criminal property damage in the second degree); section 708-831 (theft in the second degree); section 708-833.5 (shoplifting); section 708-835.5 (theft of livestock); section 708-836 (unauthorized control of propelled vehicle); section 708-836.5 (unauthorized entry into motor vehicle); section 708-839.5 (theft of utility services); section 708-839.8 (identity theft in the third degree); section 708-852 (forgery in the second degree); section 708-854 (criminal possession of a forgery device); section 708-858 (suppressing a testamentary or recordable instrument); section 708-875 (trademark counterfeiting); section 708-891.5 (computer fraud in the second degree); section 708-892.5 (computer damage in the second degree); section 708-895.6 (unauthorized computer access in the second degree); section 708-8100 (fraudulent use of a credit card); section 708-8102 (theft/forgery of credit cards); section 708-8103 (credit card fraud by a provider of goods or services); section 708-8104 (possession of unauthorized credit card machinery or incomplete cards); section 708-8200 (cable television service fraud in the first degree); section 708-8202 (telecommunication service fraud in the first degree); section 709-903.5 (endangering the welfare of a minor in the first degree); [§] 709-906 (abuse of family or household members); section 710-1016.3 (obtaining a government-issued identification document under false pretenses in the first degree); section 710-1016.6 (impersonating a law enforcement officer in the first degree); section 710-1017.5 (sale or manufacture of deceptive identification document); section 710-1018 (securing the proceeds of an offense); section 710-1021 (escape in the second degree); section 710-1023 (promoting prison contraband in the second degree); section 710-1024 (bail jumping in the first degree); section 710-1029 (hindering prosecution in the first degree); section 710-1060 (perjury); section 710-1072.5 (obstruction of justice); section 711-1103 (riot); section 711-1109.3 (cruelty to animals/fighting dogs); section 711-1110.9 (violation of privacy in the first degree); section 711-1112 (interference with the operator of a public transit vehicle); section 712-1221 (promoting gambling in the first degree); section 712-1222.5 (promoting gambling aboard ships); section 712-1224 (possession of gambling records in the first degree); section 712-1243 (promoting a dangerous drug in the third degree); section 712-1246 (promoting a harmful drug in the third degree); section 712-1247 (promoting a detrimental drug in the first degree); section 712-1249.6 (promoting a controlled substance in, on, or near schools or school vehicles); section 803-42 (interception, access, and disclosure of wire, oral, or electronic communications, use of pen register, trap and trace device, and mobile tracking device prohibited); or section 846E-9(a)(2) (penalty for failure to comply with requirements of chapter 846E).

(b) Criminal charges may be instituted by written information for a felony when the charge is a class B felony under section 134-C (place to keep loaded firearms other than pistols and revolvers); section 134-E (place to keep pistol or revolver); section 134-F (carrying or possessing a loaded firearm on a public highway); section 134-7(b) (ownership or possession prohibited); section 329-43.5 (prohibited acts related to drug paraphernalia); section 708-810 (burglary in the first degree); section 708-830 (theft in the first degree); [§] 708-839.7 (identity theft in the second degree); section 708-851 (forgery in the first degree); section 708-891 (computer fraud in the first degree); section 708-892 (computer damage in the first degree); section 712-1242 (promoting a dangerous drug in the second degree); section 712-1245 (promoting a harmful drug in the second degree); or section 712-1249.5 (commercial promotion of marijuana in the second degree).”

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SECTION 6. Section 134-6, Hawaii Revised Statutes, is repealed.

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

SECTION 8. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 10. This Act shall take effect upon its approval.

(Approved May 2, 2006.)

Notes

1. Should be after "section".
2. Comma should be underscored.
3. Edited pursuant to HRS §23G-16.5.