

ACT 28

H.B. NO. 426

A Bill for an Act Relating to Firearms.

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

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

“PART . FIREARM INDUSTRY RESPONSIBILITY”

§134-A Definitions. As used in this part:

“Firearm accessory” means an attachment or device designed or adapted to be inserted into, affixed onto, or used in conjunction with a firearm that is designed, intended, or functions to alter or enhance the firing capabilities of the firearm, the lethality of the firearm, or a shooter’s ability to hold or use a firearm.

“Firearm industry member” means a person, firm, corporation, company, partnership, society, joint stock company, or any other entity or association engaged in the manufacture, distribution, importation, marketing, wholesale, or retail sale of firearm-related products.

“Firearm precursor part” means any forging, casting, printing, extrusion, machined body, or similar article that has reached a state in manufacture where it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm, or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled, or converted.

“Firearm-related product” means a firearm, ammunition, a firearm precursor part, a firearm component, or a firearm accessory that meets any of the following conditions:

- (1) The item is sold, made, or distributed in the State;
- (2) The item is intended to be sold or distributed in the State; or
- (3) The item is or was possessed in the State and it was reasonably foreseeable that the item would be possessed in the State.

“Reasonable controls” means reasonable procedures, acts, or practices that are designed, implemented, and enforced to do the following:

- (1) Prevent the sale or distribution of a firearm-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under federal or state law, or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm themselves

- or another or of possessing or using a firearm-related product unlawfully;
- (2) Prevent the loss or theft of a firearm-related product from the firearm industry member; and
 - (3) Ensure that the firearm industry member complies with all provisions of federal or state law and does not otherwise promote the unlawful manufacture, sale, possession, marketing, or use of a firearm-related product.

§134-B Firearm industry members; standards of conduct. (a) It shall be a violation of this part for a firearm industry member to fail to comply with any requirement of this part.

- (b) A firearm industry member shall:
 - (1) Establish, implement, and enforce reasonable controls;
 - (2) Take reasonable precautions to ensure that the firearm industry member does not sell, distribute, or provide to a downstream distributor a firearm-related product that is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety in the State; and
 - (3) Not engage in any conduct related to the sale or marketing of firearm-related products that is in violation of this chapter.
- (c) For the purposes of this part, a firearm-related product shall not be considered abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety based on a firearm's inherent capacity to cause injury or lethal harm.
- (d) There shall be a presumption that a firearm-related product is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety if any of the following is true:
 - (1) The firearm-related product's features render the product most suitable for assaultive purposes instead of lawful self-defense, hunting, or other legitimate sport and recreational activities;
 - (2) The firearm-related product is designed, sold, or marketed in a manner that foreseeably promotes the conversion of legal firearm-related products into illegal firearm-related products; or
 - (3) The firearm-related product is designed, sold, or marketed in a manner that is targeted at minors or other individuals who are legally prohibited from accessing firearms.

§134-C Violations; who may sue; relief. (a) An act or omission by a firearm industry member in violation of this part shall constitute an actionable cause of action.

- (b) A person who has suffered harm in the State because of a firearm industry member's violation of this part may bring an action in a court of competent jurisdiction.
- (c) In addition to any lawsuit filed against a firearm owner pursuant to section 663-9.5, the attorney general or any county attorney or public prosecutor may bring a civil action in a court of competent jurisdiction in the name of the people of the State to enforce this part and remedy harm caused by a violation of this part.
- (d) If a court determines that a firearm industry member engaged in conduct in violation of this part, the court may award any or all of the following:
 - (1) Injunctive relief sufficient to prevent the firearm industry member and any other defendant from further violating the law;
 - (2) Damages;
 - (3) Attorney's fees and costs; and

- (4) Any other appropriate relief necessary to enforce this part and remedy the harm caused by the conduct.
- (e) In an action alleging that a firearm industry member failed to establish, implement, and enforce reasonable controls in violation of section 134-B(b), there shall be a rebuttable presumption that the firearm industry member failed to implement reasonable controls if the following conditions are satisfied:
 - (1) The firearm industry member's action or failure to act created a reasonably foreseeable risk that the harm alleged by the claimant would occur; and
 - (2) The firearm industry member could have established, implemented, and enforced reasonable controls to prevent or substantially mitigate the risk that the harm would occur.
- (f) If a rebuttable presumption is established pursuant to subsection (e), the firearm industry member shall have the burden of showing through a preponderance of the evidence that the firearm industry member established, implemented, and enforced reasonable controls.
- (g) An intervening act by a third party, including but not limited to criminal use of a firearm-related product, shall not preclude a firearm industry member from liability under this part.

§134-D Interpretation of part. (a) Nothing in this part shall be construed to limit or impair in any way the right of a person or entity to pursue a legal action under any other authority.

(b) Nothing in this part shall be construed to limit or impair in any way an obligation or requirement placed on a firearm industry member by any other authority.

(c) This part shall be construed and applied in a manner that is consistent with the requirements of the United States Constitution and the Hawaii State Constitution.”

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. 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 5. This Act shall take effect on July 1, 2023.

(Approved April 26, 2023.)