

ACT 183

H.B. NO. 891

A Bill for an Act Relating to Electric Guns.

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

SECTION 1. The legislature finds that the United States Supreme Court decision in *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016), which overruled a decision of the Massachusetts Supreme Judicial Court, has raised questions regarding the constitutionality of bans on electric guns, and may make amendments to Hawaii's law on electric guns advisable.

The purpose of this Act is to protect the health and safety of the public by regulating the sale and use of electric guns and repeal the existing prohibition on electric guns.

SECTION 2. Chapter 134, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . ELECTRIC GUNS

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

“Cartridge” means any device or object that is designed to be used with an electric gun to project a missile. “Cartridge” includes but is not limited to a Taser cartridge.

“Electric gun” means any portable device that is designed to discharge electric energy, charge, voltage, or current into the body through direct contact or utilizing a projectile. “Electric gun” includes but is not limited to devices commonly referred to as stun guns and Tasers. “Electric gun” does not include any automatic external defibrillator used in emergency medical situations.

“Law enforcement agency” means any county police department, the department of public safety, the department of the attorney general, the division of conservation and resources enforcement of the department of land and

natural resources, and any other state or county public body that employs law enforcement officers.

“Law enforcement officer” means a sheriff or deputy sheriff, a police officer, an enforcement officer within the division of conservation and resources enforcement of the department of land and natural resources, a special agent of the department of the attorney general, and any other public servant vested by law with a duty to maintain public order, make arrests for offenses, or enforce criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.

“Licensee” means a person licensed to sell, offer to sell, distribute, or otherwise transfer electric guns and cartridges pursuant to section 134-C.

“Person” means an individual, firm, corporation, partnership, association, or any form of business or legal entity.

“Transfer” means the granting of possession or ownership to another. “Transfer” includes but is not limited to the granting of temporary possession to another.

§134-B Restrictions on use, sale, offer for sale, distribution, and transfer of electric guns and cartridges. (a) It shall be unlawful for any person to knowingly or recklessly use an electric gun for any purpose except:

- (1) Self-defense;
- (2) Defense of another person; or
- (3) Protection of property of the person or of another person.

(b) Except as provided in section 134-E, it shall be unlawful for any person to knowingly sell, offer to sell, distribute, or otherwise transfer an electric gun or cartridge without a license obtained pursuant to section 134-C. It is an affirmative defense to prosecution pursuant to this subsection that the person is more than twenty-one years of age and is an employee of a licensee acting within the scope of the person’s employment.

(c) It shall be unlawful for a licensee or employee of a licensee to knowingly sell, offer to sell, distribute, or otherwise transfer an electric gun or cartridge at a place other than the licensee’s designated place of business.

(d) It shall be unlawful for any person to knowingly sell, offer to sell, distribute, or otherwise transfer an electric gun or cartridge to a person less than twenty-one years of age.

(e) It shall be unlawful for any person, other than a licensee, a law enforcement agency, or the Army or Air National Guard, to knowingly or recklessly purchase, obtain, or otherwise receive an electric gun or cartridge from a person who does not have a license issued pursuant to section 134-C.

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

§134-C License to sell, offer to sell, distribute, or otherwise transfer electric guns or cartridges; fee. (a) Any person desiring to sell, offer to sell, distribute, or otherwise transfer electric guns or cartridges to a person in the State, either at wholesale or retail, shall annually file an application for a license to do so with the county in which the person desires to conduct business or within the county to which the person intends the electric guns or cartridges to be sold, offered for sale, distributed, or otherwise transferred using forms prescribed by the county.

(b) If the applicant is an individual, the application and supporting documentation shall establish at least the following:

- (1) The legal name, date of birth, and the last four digits of the social security number of the individual;

- (2) The street address, telephone number, fax number, and electronic mail address of the individual;
 - (3) The name and location of the principal place of business of the individual and, if applicable, each additional designated place of business from which the individual desires to sell, offer to sell, distribute, or otherwise transfer electric guns or cartridges;
 - (4) The individual's Hawaii tax identification number;
 - (5) That the individual has had no convictions for any felony offense;
 - (6) Within the last three years, that the individual has completed an electric gun safety or training course offered or approved by the county that focuses on:
 - (A) The safe use and handling of electric guns;
 - (B) Current information about the effects, dangers, risks, and limitations of electric guns; and
 - (C) Education on the existing state laws on electric guns; and
 - (7) Any other information the county may require.
- (c) If the applicant is not an individual, the application and supporting documentation shall establish at least the following:
- (1) The name of the applying entity and any other name under which the applying entity does business, if applicable;
 - (2) The street address, telephone number, fax number, and electronic mail address of the applying entity;
 - (3) The legal name, date of birth, and the last four digits of the social security number of each of the principal owners or members of the applying entity;
 - (4) The street address, telephone number, fax number, and electronic mail address of each of the principal owners or members of the applying entity;
 - (5) The name and location of the principal place of business of the applying entity and, if applicable, each additional designated place of business from which the applying entity desires to sell, offer to sell, distribute, or otherwise transfer electric guns or cartridges;
 - (6) That the applying entity is registered to do business in the State;
 - (7) That the applying entity is composed of principal owners or members who have had no convictions for any felony offense;
 - (8) The applying entity's Hawaii tax identification number;
 - (9) The applying entity's federal employer identification number;
 - (10) Within the last three years, that at least one principal owner or member of the applying entity has completed an electric gun safety or training course, as described in subsection (b)(6); and
 - (11) Any other information the county may require.
- (d) The applicant shall certify that the applicant will comply at all times with, and is responsible for compliance by its employees with, all provisions of law relative to the acquisition, possession, storage, sale, offer for sale, distribution, and transfer of electric guns and cartridges.
- (e) Upon receipt of the completed application form and the annual licensing fee of \$50 payable to the county, the county shall review the application and may issue a license to the applicant if it determines that the applicant meets all the requirements of this section. If requested by the licensee, the county shall provide certified copies of the license to the licensee.
- (f) A license issued pursuant to this section shall expire on June 30 next following the date of issuance of the license unless sooner terminated. Application for renewal of license shall be filed on or before July 1 of each year.

§134-D Sale, offer for sale, distribution, or transfer of electric guns or cartridges. (a) A licensee shall post the license to sell, offer to sell, distribute, or otherwise transfer electric guns or cartridges, or a certified copy thereof, in a location readily visible to customers at each designated place of business. For internet sales by a licensee, the license number shall be prominently displayed and an electronic copy of the license shall be readily accessible to the customer.

(b) An individual licensee shall complete at least once every three years an electric gun safety or training course offered or approved by the county that focuses on:

- (1) The safe use and handling of electric guns;
- (2) Current information about the effects, dangers, risks, and limitations of electric guns; and
- (3) Education on the existing state laws on electric guns.

A licensee shall keep copies of the certificates of completion of these training courses in the licensee's business records.

(c) A licensee shall not allow any employee to participate in the sale or transfer of electric guns or cartridges unless the employee completes at least once every three years the training courses described in subsection (b). The licensee shall keep copies of the certificates of completion of the training courses for each employee in the licensee's business records.

(d) If there is no manufacturer serial number on an electric gun or cartridge received into inventory by a licensee, then the licensee shall engrave on the electric gun or cartridge a legible unique serial number that begins with the licensee's license number, followed by a hyphen and a unique identifying number.

(e) A licensee shall keep records for all electric guns and cartridges received into inventory within the State, including:

- (1) Information identifying the seller, distributor, or transferor of the electric gun or cartridge; and
- (2) The transaction record for the electric gun or cartridge, including the date of receipt, a description of the electric gun or cartridge, the manufacturer's serial number or the unique identifying serial number engraved by the licensee, and, if available, the manufacturer and the model number.

(f) Before completing a sale, distribution, or other transfer of an electric gun, the licensee or an employee of the licensee shall conduct a criminal history background check of the recipient. At minimum, the criminal history background check shall be a name-based search of the adult criminal conviction records maintained by the Hawaii criminal justice data center. The licensee or employee of the licensee shall require the recipient to review a printed copy of the results of the background check. After the review, the recipient shall sign and date a declaration. The declaration shall be in the following form: "I, (name of recipient), declare under penalty of law that the attached document accurately reflects my adult criminal conviction history in Hawaii. I further declare that I do not have any convictions or charges pending against me that disqualify me from owning an electric gun. I further declare under penalty of law that I am not disqualified from owning an electric gun." The licensee or employee of the licensee shall witness the recipient sign the declaration and sign the declaration as a witness. If the recipient is disqualified from owning an electric gun, or refuses or is unable to sign or make the declaration, the licensee shall immediately terminate the sale, distribution, or transfer.

(g) Before completing a sale, distribution, or other transfer of an electric gun, the licensee or an employee of the licensee shall provide an informational briefing to the recipient that includes but is not limited to the following:

- (1) The safe use and handling of electric guns;

- (2) Current information about the effects, dangers, risks, and limitations of electric guns;
 - (3) Education on the existing state laws on electric guns; and
 - (4) The proper disposal of electric guns.
- (h) Upon completion of the informational briefing, the licensee shall provide a certification of informational briefing that is signed and dated by the recipient and the person who provided the informational briefing acknowledging that the briefing was completed and that the recipient understood the briefing. The certification shall include the names of the recipient and the person who provided the informational briefing and the date of the briefing. The form of the certification shall be as provided by the county office that issued the license to the licensee.
- (i) A licensee shall keep a record of the information provided to recipients during the informational briefing.
- (j) A licensee shall keep records of all sales, distributions, and other transactions of electric guns and cartridges sold in the State or to a recipient in the State, including:
- (1) The recipient's name, date of birth, address, and telephone number;
 - (2) A copy of the recipient's government-issued identification card or document;
 - (3) The transaction record for the electric gun or cartridge, including the date of the transaction; a description of the electric gun or cartridge; if available, the name of the manufacturer and serial and model numbers; and, if necessary, the unique serial number engraved by the licensee;
 - (4) The criminal history background check and declaration signed by the recipient and the licensee or licensee's employee as a witness; and
 - (5) A copy of the certification of informational briefing signed and dated by the recipient and the person who provided the briefing.
- (k) A licensee shall keep a record of the licensee's current inventory of electric guns and cartridges.
- (l) During normal business hours, a licensee shall allow the chief of police of the appropriate county or designee to inspect the licensee's books and records for all records required to be kept by the licensee for electric guns and cartridges. At the discretion of the chief of police of the appropriate county or designee, the inspection of the records may be conducted via facsimile transmittal of the records.
- (m) A licensee shall keep records required by this section for a minimum of ten years. If a licensee, as a result of death or dissolution, cannot maintain the records, the records shall be turned over to the chief of police of the appropriate county or designee.
- (n) When displaying or storing electric guns or cartridges at a designated place of business, a licensee shall display or store the electric guns and cartridges in a locked cabinet or area not accessible to the general public.
- (o) During normal business hours, a licensee shall allow the chief of police of the appropriate county or designee to physically inspect all electric guns and cartridges in the possession and control of the licensee wherever they may be located within the State.
- (p) Any person, including any licensee, violating this section shall be guilty of a misdemeanor.
- (q) A license may be suspended or revoked for a violation of any of the requirements of this section.

§134-E Disposal of electric gun or cartridge. A person who is not a licensee may sell or otherwise transfer an electric gun or cartridge to a licensee or the chief of police of the appropriate county or designee. The chief of police may either destroy the electric gun or cartridge or utilize the electric gun or cartridge for educational purposes. The chief of police shall maintain records of all surrendered electric guns and cartridges, including their disposition.

§134-F Ownership or possession prohibited. (a) No person who is a fugitive from justice shall own, possess, or control an electric gun.

(b) No person who is under indictment for, has waived indictment for, has been bound over to the circuit court for, or has been convicted in this State or elsewhere of having committed a felony, any crime of violence, or any illegal sale of any drug shall own, possess, or control an electric gun.

(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 acquitted of a crime on the grounds of mental disease, disorder, or defect pursuant to section 704-411;
- (3) Is or has been diagnosed as having a significant behavioral, emotional, or mental disorder as defined by the most current diagnostic manual of the American Psychiatric Association; or
- (4) Is under treatment for an organic brain syndrome;

shall own, possess, or control an electric gun, unless the person has been medically documented to be no longer adversely affected by the addiction, abuse, dependence, syndrome, or mental disease, disorder, or defect.

(d) No person who is less than twenty-five years of age and has been adjudicated by the family court to have committed a felony, two or more crimes of violence, or an illegal sale of any drug shall own, possess, or control an electric gun.

(e) No person who is less than twenty-one years of age shall own, possess, or control an electric gun.

(f) No person shall possess an electric gun that is owned by another, regardless of whether the owner has consented to possession of the electric gun.

(g) No person who has been restrained pursuant to an order of any court, including an ex parte order as provided in this subsection, from contacting, threatening, or physically abusing any person or from possessing or owning a firearm, shall possess, control, or transfer ownership of an electric gun, so long as the protective order, restraining order, or any extension is in effect, unless the order, for good cause shown, specifically permits the possession of an electric gun. The restraining order or order of protection shall specifically include a statement that possession, control, or transfer of an electric gun by the person named in the order is prohibited. Such person shall relinquish possession and control of any electric gun 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 that includes a restriction on the possession, control, or transfer of an electric gun, the affidavit or statement under oath that forms the basis for the order shall contain a statement of the facts that support a finding that the person to be restrained owns, intends to obtain or transfer, or possesses an electric gun, and that the electric gun 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 electric guns issued by any court, the police officer may take custody of any and all electric guns in plain sight, those discovered pursuant to a consensual search, and those electric guns surrendered by the person restrained.

For the purposes of this subsection, “good cause” shall not be based solely upon the consideration that the person subject to restraint pursuant to an order of any court, including an ex parte order as provided for in this subsection, is required to possess or carry an electric gun during the course of the person’s employment. “Good cause” includes but is not limited to the protection and safety of the person to whom a restraining order is granted.

(h) Any person disqualified from ownership, possession, control, or the right to transfer ownership of an electric gun under this section shall surrender or dispose of all electric guns in compliance with section 134-E.

(i) For the purposes of enforcing this section, and notwithstanding section 571-84 or any other law to the contrary, any agency within the State shall make its records relating to family court adjudications available to law enforcement officials.

(j) Any person violating subsection (a) or (b) shall be guilty of a class C felony. Any person violating subsection (c), (d), (e), (f), (g), or (h) shall be guilty of a misdemeanor.

§134-G Exemptions. (a) Sections 134-B and 134-F(f) shall not apply to:

- (1) Law enforcement agencies and law enforcement officers acting within the course of their employment; and
- (2) The Army or Air National Guard and its members when they are assisting civil authorities in disaster relief, emergency management, or law enforcement functions, subject to the requirements of section 121-34.5;

provided that the electric guns shall be acquired by the law enforcement agencies or the Army or Air National Guard and not individual law enforcement officers or members of the Army or Air National Guard, and shall remain in the custody and control of law enforcement agencies or the Army or Air National Guard.

(b) Law enforcement agencies that authorize use of electric guns by its law enforcement officers and the Army or Air National Guard shall:

- (1) Provide training from the manufacturer or from a manufacturer-approved training program conducted by manufacturer-certified or manufacturer-approved instructors in the use of electric guns before deployment of the electric guns and related equipment in public;
- (2) Maintain records regarding every electric gun in its custody and control, including every instance of usage of the electric guns, in a similar manner as records are maintained for the discharge of firearms; and
- (3) Report to the legislature on the information in, and maintenance of, these records no later than twenty days prior to the convening of each regular session.

(c) The licensing requirement of sections 134-B(b) and 134-C shall not apply to the sale of electric guns and cartridges by the electric gun manufacturers distributing directly to law enforcement agencies or the Army or Air National Guard.

§134-H Storage of electric gun; responsibility with respect to minors. (a) No person shall store or keep any electric gun on any premises under the person’s

control if the person knows or reasonably should know that a minor is likely to gain access to the electric gun, unless the person:

- (1) Keeps the electric gun in a securely locked box or other container or in a location that a reasonable person would believe to be secure; or
 - (2) Carries the electric gun on the person or within such close proximity thereto that the minor cannot gain access or control of the electric gun.
- (b) Any person violating this section shall be guilty of a misdemeanor.

§134-I Carrying or use of electric gun in the commission of a separate misdemeanor. (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 an electric gun, whether operable or not, while engaged in the commission of a separate misdemeanor; provided that a person shall not be prosecuted under this subsection when the separate misdemeanor is a misdemeanor defined by this chapter.

(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 misdemeanor; provided that the sentence imposed under this section may run concurrently or consecutively with the sentence for the separate misdemeanor.

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

§134-J Carrying or use of electric gun in the commission of a separate felony. (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 an electric gun, whether operable or not, while engaged in the commission of a separate felony; provided that a person shall not be prosecuted under this subsection when the separate felony is a felony defined by this chapter.

(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 B felony.”

SECTION 3. Section 121-34.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§121-34.5]~~ **Use of electric guns.** Members of the ~~[army or air national guard]~~ Army or Air National Guard who have been qualified by training and are authorized by their commanders may use electric guns, as specifically provided in section ~~[134-16(e) and (d),]~~ 134-G, when assisting civil authorities in disaster relief, emergency management, or law enforcement functions; provided that “training” for the purposes of this section means a course of instruction or training in the use of any electric gun authorized pursuant to this section, that is provided or authorized by the manufacturer or is manufacturer-approved or is an electric gun training program approved by the ~~[army or air national guard, prior to]~~ Army or Air National Guard, before deployment or issuance of electric guns and related equipment.”

SECTION 4. Section 134-1, Hawaii Revised Statutes, is amended by deleting the definition of “electric gun”.

~~[[“Electric gun” means any portable device that is electrically operated to project a missile or electromotive force. It does not include any electric livestock prod used in animal husbandry and any automatic external defibrillator used in emergency medical situations.”]]~~

SECTION 5. Section 134-17, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any person who violates section 134-2, 134-4, 134-10, or 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.”

SECTION 6. Section 266-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director of transportation shall enforce this chapter and all rules thereunder, except for the rules relative to the control and management of the beaches encumbered with easements in favor of the public and ocean waters, which shall be enforced by the department of land and natural resources. For the purpose of the enforcement of this chapter and of all rules adopted pursuant to this chapter, the powers of police officers are conferred upon the director of transportation and any officer, employee, or representative of the department of transportation. Without limiting the generality of the foregoing, the director and any person appointed by the director hereunder may serve and execute warrants, arrest offenders, and serve notices and orders. The director of transportation and any employee, agent, or representative of the department of transportation appointed as enforcement officers by the director, and every state and county officer charged with the enforcement of any law, statute, rule, regulation, ordinance, or order, shall enforce and assist in the enforcement of this chapter and of all rules and orders issued pursuant thereto, and in carrying out the responsibilities hereunder, each shall be specifically authorized to:

- (1) Conduct any enforcement action hereunder in any commercial harbor area and any area over which the department of transportation and the director of transportation has jurisdiction under this chapter;
- (2) Inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where harbors or harbor facilities are situated, or where harbor-related activities are operated or conducted; and
- (3) Subject to limitations as may be imposed by the director of transportation, serve and execute warrants, arrest offenders, and serve notices and orders.

Any employee appointed as a law enforcement officer by the director of transportation pursuant to this section who has been qualified by training may use electric guns, as specifically provided in section [134-16,] 134-G, when exercising powers of police officers and carrying out the responsibilities described herein; provided that training for the purposes of this section means a course of instruction or training in the use of any electric gun that is provided, authorized, or approved by the manufacturer of the electric gun [~~prior to~~] before deployment or issuance of electric guns and related equipment.

For purposes of this subsection, [~~the term “agents and representatives”~~] “agent” and “representative” includes but is not limited to persons performing services at harbors or harbor areas under contract with the department of transportation.”

SECTION 7. Section 463-10.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Before beginning employment as a guard or in a guard capacity, in addition to the classroom instruction required by this section, guards and indi-

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viduals acting in a guard capacity who carry a firearm or other weapon, including but not limited to an electric gun as defined in section [~~134-1,~~] 134-A, while on-duty in a guard capacity shall possess a valid permit to acquire the ownership of a firearm issued by county police pursuant to section 134-2 and shall satisfy the requirements of section 134-2(g).”

SECTION 8. Section 134-16, Hawaii Revised Statutes, is repealed.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act.

SECTION 10. In codifying the new sections added by section 2 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 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on January 1, 2022.

(Approved July 6, 2021.)