RELATING TO ELECTRIC GUNS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the opinion of the Supreme Court of the United States 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.

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 a taser cartridge.
"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, police officer, enforcement officer within the division of conservation and resources enforcement of the department of land and natural resources, special agent of the department of the attorney general, and any other public servant vested by law with a duty to maintain public order, to make arrests for offenses, or to 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 or distribute electric guns 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, and includes the granting of temporary possession to another.

§134-B Restrictions on use, sale, and transfer of electric guns. (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.

(b) It shall be unlawful for any person to knowingly sell, offer for sale, 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 an adult employee of a licensee acting within the scope of the person's employment.

(c) It shall be unlawful for a licensee or an employee of a licensee to knowingly 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 for sale, distribute, or otherwise transfer an electric gun or cartridge to a minor.

(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 or distribute electric guns; fee.

(a) Any person desiring to sell, offer for sale, distribute, or otherwise transfer electric guns to a person in the State, either at wholesale or retail, shall annually file an application for a corresponding 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 to be distributed, using forms prescribed by the county.

(b) If the applicant is an individual, the application and supporting documentation must 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
e-mail address of the individual;
(3) The name and location of the principal place of
business of the applicant and, if applicable, each
additional designated place of business from which the
applicant desires to sell electric guns;
(4) The applicant's Hawaii tax identification number;
(5) That the applicant has not been convicted of any
felony offense;
(6) That within the last three years, the applicant 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 current 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 must 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 e-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 principals or members of the applying entity;

(4) The street address, telephone number, fax number, and e-mail address of each of the principals 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 electric guns;

(6) That the applying entity is registered to do business in the State;
(7) That none of the applying entity's principal owners or members have been convicted of any felony offense;
(8) That the applying entity has a Hawaii tax identification number;
(9) That the applying entity has a federal employer identification number;
(10) That within the last three years, 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 must certify that the applicant will comply at all times with all provisions of law relative to the acquisition, possession, storage, and sale of electric guns. Further, if the applicant is not an individual, the applicant must also certify that it is responsible for compliance by its employees of all laws relating to the acquisition, possession, and sale of electric guns.
(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 also provide certified copies of the license to the
licensee.

(f) A license issued hereunder shall expire on the June 30
following the date of issuance of the license, unless sooner
terminated. An application for the renewal of a license shall
be filed before July 1 of each year.

§134-D The sale or transfer of electric guns. (a) A
licensee shall post the license to sell or distribute electric
guns, 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 current state laws on electric guns.

An individual licensee shall keep a copy of the certificate of completion of the training course in the licensee's business records.

(c) A licensee that is not an individual 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, an electric gun safety or training course described in subsection (b). The licensee shall keep a copy of each certificate of completion for each employee who has completed the course 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, the licensee shall engrave on the electric gun or cartridge a legible and 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) Prior to completing a sale or other transfer of an electric gun, the licensee or an employee of the licensee shall provide a briefing to the recipient that includes information on:

(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 current state laws on electric guns;

and

(4) The proper disposal of electric guns.

(g) Upon completion of the informational briefing, the licensee shall provide a certification that includes the names of the recipient and the person who provided the informational
briefing and the date of the briefing. The certificate shall be signed and dated by the recipient and the person who provided the briefing, with both persons acknowledging the completion of the briefing. Further, the recipient shall affirm that the recipient understood the briefing. The form of the certification shall be as provided by the county office that issued the license to the licensee.

(h) A licensee shall keep a record of the information provided to recipients during the informational briefings.

(i) A licensee shall keep records of all sales, distributions, and other transactions of electric guns and cartridges sold or distributed 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, the name of the manufacturer, serial and model numbers, and, if
necessary, the unique serial number engraved by the licensee; and

(4) A copy of the certification required under subsection (f), signed and dated by the recipient and the person who provided the briefing.

(j) A licensee shall keep a record of the licensee's current inventory of electric guns and cartridges.

(k) During normal business hours, a licensee shall allow the chief of police of the appropriate county or the chief's designee to inspect the licensee's books and records for all records required to be kept by licensees under this section. At the discretion of the chief of police, the inspection of the records may be conducted via facsimile transmittal of the records.

(l) A licensee shall keep records required by this section for a minimum of ten years. If the 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.

(m) When displaying or storing electric guns or cartridges at designated places 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.

(n) During normal business hours, a licensee shall allow the chief of police of the appropriate county or the chief's 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.

(o) Any person, including any licensee, who violates this section shall be guilty of a misdemeanor.

(p) A license may be suspended or revoked for a violation of any of the requirements of this section.

§134-E Disposal of electrical gun. A person who is not a licensee pursuant to section 134-C may sell or otherwise transfer an electric gun or cartridge to a licensee or may surrender the electric gun or cartridge to the chief of police of the appropriate county. The chief of police may either destroy the electric gun or cartridge, or use 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; or

(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 for treatment for organic
brain syndromes,
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, mental disease,
disorder, or defect.
(d) No person who is less than twenty-five years of age
and who 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 minor 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, 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. That 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 to 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 may include but need not be
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 duties; 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 provide training from the manufacturer
or from a manufacturer-approved training program, as well as by
manufacturer-certified or manufacturer-approved instructors, in
the use of electric guns prior to deployment of the electric
guns and related equipment in public.

(c) The law enforcement agencies that authorize use of
electric guns by its law enforcement officers and the army or
air national guard shall maintain records regarding every
electric gun in its custody and control. The records shall
report every instance of usage of the electric guns. Records
shall be maintained in a similar manner as for those of
discharging of firearms. The law enforcement agencies and the
army and air national guard shall annually report to the
legislature regarding these records no later than twenty days
prior to the convening of each regular session.

(d) The licensing requirements 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 section when the separate
misdemeanor is a misdemeanor offense established 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 using an 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 section when the separate felony is
a felony offense established 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 who have been qualified by training and are authorized by their commanders may use electric guns, as specifically provided in section §134-16(c) and (d), 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 deployment or issuance of electric guns and related equipment."

SECTION 4. 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 5. Section 134-16, Hawaii Revised Statutes, is
repealed.

["§134-16—Restriction on possession, sale, gift, or
delivery of electric guns. (a) It shall be unlawful for any
person, including a licensed manufacturer, licensed importer, or
licensed dealer, to possess, offer for sale, hold for sale,
sell, give, lend, or deliver any electric gun.

(b) Any electric gun possessed, offered for sale, held for
sale, sold, given, lent, or delivered in violation of subsection
(a) shall be confiscated and disposed of by the chief of police.

(c) This section shall not apply to:

(1) Law enforcement officers of county police departments;
(2) Law enforcement officers of the department of public
   safety;
(3) Conservation and resources enforcement officers of the
department of land and natural resources;
(4) Members of the Army or Air National Guard when
    assisting civil authorities in disaster relief,
emergency management, or law enforcement functions, subject to the requirements of section 12134.5; and

(5) Vendors providing electric guns to the individuals described in paragraphs (1) through (4);

provided that electric guns shall at all times remain in the custody and control of the law enforcement officers of the county police departments, the law enforcement officers of the department of public safety, the conservation and resources enforcement officers of the department of land and natural resources, or the members of the Army or Air National Guard.

(d) The county police departments of this State, the department of public safety, the department of land and natural resources, and the army and air national guard shall maintain records regarding every electric gun in their custody and control. The records shall report every instance of usage of the electric guns; in particular, records shall be maintained in a similar manner as for those of discharging of firearms. The county police departments, the department of public safety, the department of land and natural resources, and the army and air national guard shall annually report to the legislature
regarding these records no later than twenty days before the
beginning of each regular session of the legislature.

(c) The department of land and natural resources and the
department of public safety shall ensure that each of its
conservation and resources enforcement officers and law
enforcement officers who is authorized to use an electric gun
and related equipment shall first receive training from the
manufacturer or from a manufacturer approved training program,
as well as by manufacturer certified or approved instructors in
the use of electric guns prior to deployment of the electric
guns and related equipment in public. Training for conservation
and resources enforcement officers of the department of land and
natural resources and law enforcement officers of the department
of public safety may be done concurrently to ensure cost
savings.

(f) No later than June 30, 2018, the conservation and
resources enforcement program of the department of land and
natural resources shall meet the law enforcement accreditation
or recognition standards of the Commission on Accreditation for
Law Enforcement Agencies, Inc., in the use of electric guns."
SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

INTRODUCED BY: __________________________

JAN 24 2019
Report Title:
Electric Guns; Licenses; Regulation; Prohibitions

Description:
Repeals the ban on electric guns. Establishes a regulatory structure for the sale and transfer of electric guns by licensed persons. Restricts the use, storage, transfer, and disposal of electric guns. Requires training and education on electric guns. Prohibits certain individuals from possessing and using electric guns. Prohibits the use of electric guns in the commission of crimes.

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