A BILL FOR AN ACT

RELATING TO ELECTRIC GUNS.

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

SECTION 1. The legislature finds 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 the bill 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 but is not limited to 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 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 of the person or of another person.

(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 licensed person or 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 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, in addition to any other information the county may require:

(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 email 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) The applicant has had no convictions for any felony offense; and

(6) Within the last three years, the applicant has completed an electric gun safety or training course, offered by the county, or approved by the county, that focuses on:

(i) The safe use and handling of electric guns;

(ii) Current information about the effects, dangers, risks, and limitations of electric guns; and

(iii) Education on the current state laws on electric guns.

(c) If the applicant is not an individual, the application and supporting documentation must establish at least the following, in addition to any other information the county may require:

(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 email 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
   email 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) The applying entity is registered to do business in
   the State;

(7) The applying entity is composed of principals or
   members who have had no convictions for any felony
   offense;

(8) The applying entity has a Hawaii tax identification
   number;

(9) The applying entity has a federal employer
   identification number; and

(10) Within the last three years, at least one principal or
    member of the applying entity has completed an
    electric gun safety or training course, offered by the
    county, or approved by the county, that focuses on:

   (i) The safe use and handling of electric guns;

   (ii) Current information about the effects, dangers,
risks, and limitations of electric guns; and

(iii) Education on the current state laws on electric
guns.

(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, and
must also certify that it is responsible for compliance by its
employees of all provisions of law relative 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 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 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, every three
years, an electric gun safety or training course, offered by the
county, 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.

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

(c) A licensee shall require employees who participate in
the sale or transfer of electric guns or cartridges, to
complete, every three years, an electric gun safety or training
course, offered by the county, 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.

A licensee shall not allow an employee to participate in
the sale or transfer of electric guns or cartridges until the
employee completes the electric gun safety or training course.

A licensee shall keep copies of the certificates of
completion of these training courses for each of these employees
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) Prior to completing a sale 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 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 of informational briefing that is signed and dated by the recipient and the person who provided the briefing acknowledging the completion of the briefing and that the recipient understood the briefing and includes 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.

(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 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, 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 of informational briefing signed and dated by the recipient and the person who provided the briefing.

(j) A licensee shall also 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 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.

(1) 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.

(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 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, violating 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 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, or has waived
indictment for, or has been bound over to the circuit court for,
or has been convicted in this State or elsewhere of having
committed a felony, or 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
(3) Is or has been 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 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 has been adjudicated by the family court to have committed a felony, or 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. 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 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 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 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; in
particular, 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 before the beginning of each regular session of the
legislature.

(d) 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 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),] 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 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 121-34.5;

(5) Law enforcement officers appointed by the director of transportation pursuant to section 266-24; and

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

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, the members of the Army or Air National Guard, or law enforcement officers appointed by the director of transportation.

(d) The county police departments of this State, the department of public safety, the department of land and natural resources, the army and air national guard, and the department
of transportation 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, the army and air national guard, and
the department of transportation 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, the
department of public safety, and the department of
transportation 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, law enforcement officers of the department of
public safety, and law enforcement officers of the department of
transportation 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.
(g) No later than June 30, 2024, the law enforcement
officers appointed by the director of transportation 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 the effective date of this Act.

SECTION 7. In codifying the new sections added to chapter
134, Hawaii Revised Statutes, by section 2 and referenced in
section 3 of this Act, the revisor of statutes shall substitute
appropriate section number for the letters used in designating
the new sections in this Act.

SECTION 8. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

INTRODUCED BY: ____________________________

BY REQUEST

JAN 21 2020
Report Title:
Electric Guns

Description:
Repeals section 134-16, Hawaii Revised Statutes, the current law that bans electric guns, and replaces it with a law that restricts the use, storage, transfer, and disposal of electric guns, regulates the sale of electric guns, requires training and education on electric guns, prohibits certain individuals from the possession and use of electric guns, and prohibits the use of electric guns in the commission of crimes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.
DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO ELECTRIC GUNS.

PURPOSE: To protect the health and safety of the public by regulating the sale and use of electric guns.

MEANS: Add a new part to chapter 134, Hawaii Revised Statutes, amend sections 121-34.5 and 134-17(c), and repeal section 134-16, Hawaii Revised Statutes.

JUSTIFICATION: The United States Supreme Court decision in Caetano v. Massachusetts, 136 S. Ct. 1027 (2016), raised the question of the constitutionality of a complete ban on electric guns. A pending lawsuit in the United States District Court for the District of Hawaii, Roberts v. Ballard, 18-00125 HG-KSC, is seeking a declaratory judgment and injunction to invalidate Hawaii’s electric gun ban.

The bill repeals the Hawaii’s electric gun ban and creates a regulatory scheme that restricts the use of electric guns to self defense and requires the sellers of electric guns to be licensed and keep records of inventory and sales. This bill also creates criminal offenses for using electric guns in the commission of crimes.

Impact on the public: Allows the public to purchase and use electric guns for self defense.

Impact on the department and other agencies: The counties will be responsible for issuing licenses to sellers of electric guns. The county police departments will be responsible for the disposal of unregistered or surrendered electric guns.
GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Law enforcement agencies may allow their officers to carry electric guns subject to training and reporting requirements.

EFFECTIVE DATE: Upon approval.