

HAWAII FIREARMS LAWS by Max Cooper. Revised Jan 6, 2017

STATE CONSTITUTIONAL PROVISIONS

The Hawaii State Constitution directly copies the 2nd Amendment to the U.S. Constitution, “A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.” Article I, Section 17.

STATE MILITIA

State law defines the militia as “every resident able-bodied citizen of the United States who is seventeen years old or older and under forty-six years of age and all other able-bodied residents of that age who have declared their intention to become citizens of the United States,” and further defines an “unorganized militia” consisting of “those members of the militia who are not members of national guard, the naval militia, or the state defense force.” Women are not excluded. Hawaii Revised Statutes Section 121-1

REGISTRATION OF ALL FIREARMS BROUGHT INTO THE STATE

All firearms brought into the State must be registered with the county police within 5 days. Aliens may bring in firearms for 90 days only for bona fide hunting or target shooting. You do not need a permit to acquire to bring your own firearms into the State.

PERMITS TO ACQUIRE

Acquiring any firearm within the State requires a permit from your county chief of police. You must be 21 years old and a U.S. citizen. You must be fingerprinted and photographed for a criminal background check and affirm by affidavit your mental health and lack of drug or alcohol addiction or criminal background. You authorize release of your medical history and give the name and address of your doctor (if any). You are not required to find a doctor or provide a medical clearance. Your doctor is required to release any mental health information pertinent to your acquiring firearms. A drunk driving record, history of serious psychiatric diagnosis, or any treatment for alcohol or drug abuse will result in denial of your permit. A letter from a physician will be required to establish that you are “no longer adversely affected”.

If you are denied a permit because you are disqualified to possess, the county police must notify you in writing of the reason for denial. You then have 30 days to transfer all your firearms and ammunition to a dealer or other authorized person or turn them in to the police.

You must wait 14 days for your initial permit, and the police chief may require that you wait 14 days for each subsequent permit, at his discretion. Individual permits to acquire handguns are required for each transaction and must be used with 10 days of issue. A permit to acquire shotguns and rifles is good for one year from the date of issue for any number of transactions.

RAP-BACK There is a now a one-time fee for permits or registration charged by the Hawaii criminal justice data center for implementing the “Rap-back” program, requiring an FBI background check, fingerprinting, and submission of your name, social security number, height, weight, hair and eye color, and that you are a firearms owner, to a permanent federal data base that will report you back to your county police if you are

arrested on felony charges or even some misdemeanor charges anywhere in the US. Even if you paid a previous fee for an FBI background check with fingerprints, you are required to pay the new fee, \$42, exact change cash or credit cards accepted (when the machine works). The several forms required and additional information are available at <http://honolulu.hawaii.gov/police/information/index.php?page=gunmain> Neighbor Island residents, check with your own county PD for variations.

You must show evidence of safety training to get a permit to acquire a handgun. Military pistol courses, law enforcement courses, a Hawaii Hunter Education Course, or a 6-hour course including 2 hours range time, instruction in Hawaii gun laws, and safe handling and storage, taught by an NRA certified instructor, with the proper affidavit, all meet the criteria.

The Honolulu Police Dept. interprets this section of law as requiring a new permit to receive your own firearms held by HPD back (see "TRO's").

You may transfer inherited firearms to a licensed firearms dealer without going through the permit to acquire process. Present a copy of the death certificate of the previous owner to the dealer. Proper transfer of firearms should be part of your and your relatives' estate planning.

REGISTRATION OF FIREARMS ACQUIRED IN STATE

Firearms must be registered with the chief of police within five days of acquisition. Firearms firing loose black powder and antique or deactivated firearms need not be registered (but are otherwise defined as firearms and other laws apply). Owners who acquired rifles and shotguns (long guns) in state before July 1, 1994, need not register them. Spouses who otherwise meet requirements for a permit to acquire may jointly register firearms.

Any individual transferring a long gun must notify the chief of police of the county who issued the permit to acquire of the name of the individual acquiring the firearm and the make, model, barrel length, and serial number, within 48 hours of transfer, or the long gun may be seized.

PLACE TO KEEP AND CARRY

Concealed carry and open carry are felonies without a permit to do so from the chief of police of your county. Although allowed by law in special circumstances of threat to self or property, the chiefs' policy at present is to grant only to law enforcement and those military and security guards whose duties specifically require such. Private citizens are denied. Hawaii is a "may issue" and "only with cause" state.

You may keep firearms and ammunition in your home, office (if your employer permits), or place of sojourn (where you lodge or sleep). You may transport directly between these and a firing range, gun class, meeting or show, the police station, hunting, a gunsmith, and a firearms dealer. Guns must be transported unloaded, in rigid lockable receptacles or commercial gun containers that completely enclose the firearm (a commercially produced gun sock meets the criteria). Unloaded means no ammunition in the chamber, cylinder, or magazine if inserted in the firearm. Vehicles carrying loaded guns are subject to seizure and forfeit.

Note that in the firearms statutes, the word “firearm” is often followed by the words “and ammunition”. Thus, ammunition, even in the absence of a firearm, is subject to the same restrictions as firearms in terms of transport and places to keep and carry.

SECURING FIREARMS If a minor under 16 years of age is likely to gain access to your firearm, without parental permission, except as provided by law when at a range or hunting, you may be guilty of a misdemeanor punishable by fine and jail (unless obtained by break-in, etc.).

The owner of a firearm is “absolutely” liable for personal injury or property damage caused by the discharge of the firearm unless the firearm was stolen and reasonably reported stolen, or unless the discharge of the firearm was legally justified, or property of an NRA Firearms Instructor conducting a class on a range. A firearm must be locked up or otherwise reasonably secured unless carried on the person or in such close proximity that the person readily can retrieve and use it as if it were carried on the person.

Rifles and shotguns may be loaned for a maximum of 15 days to persons lawfully able to possess. Another authorized person at a target range may use any firearm when the owner is present. Handguns otherwise may not be loaned.

Minors 16 years old or older may possess long guns while hunting if licensed to hunt, and minors age 12-16 may do so when accompanied by an adult. Hunting with a handgun is permitted subject to hunting rules developed by the Department of Land and Natural Resources. The chief of police may issue a permit to aliens eighteen or over for up to 60 days after the alien has obtained a hunting license. A hunter education course is required to obtain a Hawaii hunting license.

DISABILITY TO POSSESS If you are subject to a temporary restraining order (TRO) brought by someone who says you have firearms and they are afraid you may threaten with or use them, you must turn in all your firearms and ammunition to the county police for the duration of that order. The police officer serving the order may take any firearms or ammunition in sight, may search for them if invited, and must otherwise get a search warrant. Any police officer who has reasonable grounds to believe that a person has recently assaulted or threatened to assault a family or household member may seize without warrant any firearms or ammunition used or threatened to be used. In some instances (no TRO issued, lawful possession, no criminal charges pending, not held as evidence), owners of seized firearms may reclaim them within 7 working days. Individuals under restraining orders may transfer their firearms to licensed firearms dealers.

Convicted felons, persons dishonorably discharged from military service, indicted persons, and those convicted of violent misdemeanors, including family violence, may not possess firearms or ammunition. Act 109, passed during the 2016 Hawaii State Legislative Session, defines a new misdemeanor offense, 4th degree family violence. It can be as little as sending your ex unwelcome texts. Only a special Governor’s pardon can restore gun rights.

ACT 110, enacted June 2016, allows county police who transport individuals to a psychiatric facility for emergency mental health issues or involuntary hospitalization to advise them to immediately surrender their firearms and ammunition to the Chief of Police or have them seized. No court order or judicial due process is required. To have

the firearms returned, the individual is required find a physician willing to certify he or she is “no longer adversely affected” or institute legal proceedings against the State.

FIREARMS PROHIBITED

Full auto (machine gun) firearms are not permitted in Hawaii (since statehood) except for military and law enforcement.

“Assault pistols”, defined by several characteristics, essentially large semi auto pistols of cosmetic paramilitary appearance, usually accepting detachable magazines of over 10 rounds capacity, are banned, except those registered before July 1992 (grand-fathered, may not be transferred). These include semi auto versions of UZI, Tech-9, etc., and certain large target pistols. A non-inclusive list is available from the State Attorney General and county police chiefs,

Hawaii state law prohibits greater than 10 round detachable pistol magazines (including rifle magazines capable of use in any pistol, such as the AR-15/M16, AK, M1 carbine, H&K carbine, Thompson, and aftermarket Ruger .22 magazines) unless blocked to hold 10 rounds or less and “not readily restorable”. Possession of illegal magazines is a misdemeanor, and possession of a handgun with one inserted is a class C felony. There is much debate among gun owners, law enforcement, and dealers over the interpretation of this portion of the statutes when rifle magazines which fit handguns are considered, and the prohibition is not generally enforced.

The federal 1994 “assault rifle” ban is now sunset and void.

Stun guns, cannon, silencers, hand grenades, explosives, bombs, Teflon coated ammunition, explosive or segmenting ammunition, handguns made of zinc allowing melting at less than 800 degrees F (the legal definition of “Saturday night special”), shotguns with barrels less than 18 inches and rifles with barrels less than 16 inches are illegal in Hawaii.

RECKLESS ENDANGERING

Discharging a firearm toward a populated area or on or toward a street or road is reckless endangering. This can apply to ranges, plinking, negligent discharges, and self-defense use.

USE OF DEADLY FORCE IN HAWAII

Deadly force is justifiable only in self-defense or in defense of other innocents where one reasonably believes death, serious bodily injury, kidnapping, rape, or forcible sodomy may otherwise result. Use of deadly force for protection of private property can result in criminal charges. Using deadly force is otherwise not justifiable if it can be safely avoided by retreating or adopting other defensive strategies, except it is not required in Hawaii that you retreat from your home. You cannot justify the use of deadly force defensively if you initiated its use or escalated a confrontation. Police officers are instructed to make an arrest in ANY homicide. The prosecutor then decides whether to bring charges.

SHIPPING AND TRAVELING WITH FIREARMS AND AMMUNITION

Private persons may not send firearms across state lines to one another (unless they are federally licensed firearms dealers) except to and from a factory or authorized gunsmith for repair or to ship *inherited* firearms. Most licensed dealers will ship and receive to and from another dealer for you for a fee. Express shipping companies will often ship only between dealers. This does not prohibit your own firearms, including firearms *inherited* by you, from being shipped directly to you. Shotguns, rifles, antiques, and muzzle-loading firearms may be shipped by U.S. Mail. Private citizens may mail shotguns and rifles directly to a dealer. Registered mail is recommended. **You may not ship ammunition or handguns by mail.** The post office may require you to show or certify in writing that the firearm is unloaded and certify that the recipient is authorized according to federal statute. The post office, however, will *not* provide you with advice on the federal statutes regarding transporting firearms. **Black powder, its substitutes, percussion caps, or smokeless powder or primers may not be transported by commercial air or U.S. Mail.** It is lawful to ship ammunition for yourself if 21 y.o or older to and from Hawaii, but the express costs and red tape involved often make it prohibitive.

You may travel with your firearms. The Transportation Security Administration (TSA) has guidelines and rules. *They change.* Look at the TSA website before you travel with firearms. <http://www.tsa.gov>

See your airline website for their baggage policies for “hazardous items.” *They change.*

It is often wise to take a copy of both the most recent TSA guidelines and your airline’s policy with you when you travel with firearms. Often the TSA agents and the airlines ticket/ baggage agents do not completely understand their rules and regulations. Help them comply. **Arrive at check-in early.** Bring your firearms in a hard case, securely locked. Ammunition must be secured in commercially manufactured ammunition containers.

UNDER NO CIRCUMSTANCES TRY TO BOARD AN AIRLINER WITH FIREARMS OR AMMUNITION ON YOUR PERSON OR IN CARRY-ON LUGGAGE!

Know the firearms laws at your destination. Federal statute states that if you begin your journey in compliance with local laws and end your journey similarly, then you are in compliance in transit, if your firearms and ammunition are properly secured (e.g. unloaded and not readily accessible) despite local laws to the contrary. If you interrupt your travel (if you leave the secure area) then you are subject to local laws.

[] **CAUTION:** State and federal firearms laws are complex and subject to frequent change. The above review is not to be considered as legal advice or a restatement of law. Some of it is in error. To determine the applicability of these laws to specific situations you may encounter, you are strongly urged to consult a qualified local attorney familiar with firearms law. HRA, 808-396-5433, has a list of Hawaii firearms attorneys. []

PROTECT YOUR GUN RIGHTS, JOIN HAWAII RIFLE ASSOCIATION @

hawaiirifleassociation.org

References: http://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0134/