

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE FIREARMS LAW (2008
REVISION) TO CREATE THE OFFENCE OF MODIFYING A THING
TO APPEAR OR OPERATE LIKE A FIREARM; TO CREATE THE
OFFENCE OF HANDLING; TO PROVIDE GREATER POWERS OF
SEARCH; TO MAKE PROVISION FOR WARRANTS OF DETENTION;
AND FOR INCIDENTAL AND CONNECTED PURPOSES**

THE FIREARMS (AMENDMENT) BILL, 2011

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Firearms Law (2008 Revision) to make provision for the offences of modifying a thing to appear or operate like a firearm and handling.

The Bill provides for the expansion of the powers of search in relation to firearms offences.

It also makes provision for warrants of detention to be made in relation to a person, arrested for a firearms offence, for a period not exceeding twenty-eight days where it is necessary to secure or preserve evidence or allow for sufficient time to obtain results from forensic testing in order to assist in the determination of a charge.

THE FIREARMS (AMENDMENT) BILL, 2011

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Firearms Law (2008 Revision) - definitions and interpretation
3. Insertion of new section 12A - modifying to appear or operate as a firearm
4. Insertion of new sections 18A and 18B - handling firearm or bullet-proof vest; presumption of possession or handling of firearm or bullet-proof vest
5. Insertion of new section 30A - power to search
6. Insertion of new sections 35A and 35B - warrant for detention without charge; extension of warrant for detention
7. Amendment of section 39 - minimum sentences for certain offences
8. Repeal and substitution of section 40 - restriction on eligibility for release on licence
9. Amendment to section 41 - forfeiture of firearms

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A BILL FOR A LAW TO AMEND THE FIREARMS LAW (2008 REVISION) TO CREATE THE OFFENCE OF MODIFYING A THING TO APPEAR OR OPERATE LIKE A FIREARM; TO CREATE THE OFFENCE OF HANDLING; TO PROVIDE GREATER POWERS OF SEARCH; TO MAKE PROVISION FOR WARRANTS OF DETENTION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Firearms (Amendment) Law, 2011. Short title

2. The Firearms Law (2008 Revision), in this Law referred to as the “principal Law”, is amended in section 2 as follows - Amendment of section 2 of the Firearms Law (2008 Revision) - definitions and interpretation
 - (a) in subsection (1) -
 - (i) by deleting the word “and” at the end of the definition of “restricted person”;
 - (ii) by deleting the full stop at the end of the definition of “traveller” and substituting a semi-colon and the word “and”
 - (iii) by inserting after the definition of the word “traveller” the following definition -

“vessel” includes any ship, aircraft, hovercraft, vehicle or thing in which anything may be carried, stored or secreted.”.

- (b) in subsection (2) -
 - (i) in paragraph (a) by deleting, after the semi-colon, the word “and”;
 - (ii) in paragraph (b) by deleting the full stop and substituting a semi-colon and the word “and”;
 - (iii) by inserting after paragraph (b) the following paragraph -

“(c) a person “handles” a firearm, bullet-proof vest or any thing the construction or action of which has been modified to make it appear or operate as a firearm if -

- (i) he is in any way concerned with removing, carrying, harbouring, keeping or concealing that firearm, bullet-proof vest or thing, or anything containing that firearm, bullet-proof vest or thing; or
- (ii) he deals in any manner with that firearm, bullet-proof vest or thing.”.

Insertion of new section 12A - modifying construction or action of firearm

3. The principal Law is amended by inserting after section 12 the following section -

“Modifying to appear or operate like a firearm

12A. (1) No person shall, without lawful authority -

- (a) modify the construction or action of any thing to make it appear or operate as a firearm;
- (b) possess or handle any thing the construction or action of which has been modified to make it appear or operate as a firearm; or
- (c) acquire or sell any thing the construction or action of which has been modified to make it appear or operate as a firearm.

(2) Whoever contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars and to imprisonment for twenty years.”.

Insertion of new sections 18A and 18B - handling firearm or bullet-proof vest; presumption of possession or handling of firearm or bullet-proof vest

4. The principal Law is amended by inserting after section 18 the following sections -

“Handling firearm or bullet-proof vest

18A. (1) No person shall, without lawful authority, knowingly handle a firearm or bullet-proof vest.

(2) Whoever contravenes subsection (1) is guilty of an offence and, subject to section 39, is liable on conviction to a

fine of one hundred thousand dollars and to imprisonment for twenty years.

Presumption of possession or handling of firearm or bullet-proof vest

18B. (1) Without prejudice to any other provision of this Law -

- (a) where it is proved beyond reasonable doubt that a person imported anything containing a firearm or bullet-proof vest, it shall be presumed, until the contrary is proved, that such person knew that such firearm or bullet-proof vest was contained in such thing;
- (b) where it is proved beyond reasonable doubt that a person had in his possession or custody or under his control anything containing a firearm or bullet-proof vest, it shall be presumed, until the contrary is proved, that such person was in possession of or handled such firearm or bullet-proof vest;
- (c) where it is proved beyond reasonable doubt that a person supplied to any other person anything containing a firearm or bullet-proof vest, it shall be presumed, until the contrary is proved, that such first-mentioned person knew that such firearm or bullet-proof vest was contained in such thing;
- (d) where it is proved beyond reasonable doubt that a person is in any way concerned in carrying, removing, harbouring, keeping, concealing, handling or dealing in any manner with anything containing a firearm or bullet-proof vest, it shall be presumed, until the contrary is proved, that such person knew that such firearm or bullet-proof vest was contained in such thing;
- (e) where it is proved beyond reasonable doubt that a person had in his possession or custody or under his control a dock warrant, warehouse warrant or order, baggage receipt or claim, airway-bill, bill of lading or other similar document relating to anything containing a firearm or bullet-proof vest, it shall be presumed, until the contrary is proved, that such person was in possession of

- such firearm or bullet-proof vest;
- (f) where it is proved beyond reasonable doubt that a person had in his possession or under his control any vehicle, vessel or other thing in or on which is found any firearm or bullet-proof vest, until the contrary is proved, he shall be deemed to have had in his possession such firearm or bullet-proof vest; and
- (g) where it is proved beyond reasonable doubt that a person is the owner, tenant, lessee or occupier of any dwelling house or other private premises in or on which is found any firearm or bullet-proof vest, until the contrary is proved, he shall be deemed to have had in his possession such firearm or bullet-proof vest.”.

Insertion of new section 30A in the principal Law - power to search

5. The principal Law is amended by inserting in Part VI immediately before section 31, the following section -

“Power to search 30A. (1) Notwithstanding the powers provided under sections 18(12) and (13), if a constable or customs officer has reasonable cause to suspect that any person is in possession of a firearm or bullet-proof vest in contravention of this Law he may, without warrant, detain and search such person and whether or not any person is detained or searched may, without warrant, break open and search any premises, vehicle, vessel or thing whatsoever in which he has reasonable cause to suspect that any such firearm or bullet-proof vest may be concealed.

(2) No person shall, in exercise of the powers conferred by subsection (1), conduct a personal search of a person not of the same sex.

(3) In this section a “customs officer” means a person appointed to be an officer of the Customs under section 6(1) of the Customs Law (2010 Revision).

2010 Revision

Insertion of new sections 35A and 35B in the principal Law - warrant for detention without charge; extension of warrant for detention

6. The principal Law is amended by inserting after section 35 the following sections -

“Warrant for detention without 35A. (1) Notwithstanding any other Law, where a person has been arrested and detained by a constable on suspicion of

charge

committing -

- (a) an offence under this Law; or
- (b) any other offence involving the use of a firearm,

the provisions of this section and section 35B shall apply.

(2) Where, on an application on oath made by a police officer of the rank of Chief Inspector or above and supported by an affidavit, the summary court is satisfied that there are reasonable grounds for believing that the continued detention of the person to whom the application relates is justified, the summary court may issue a warrant of detention authorizing the keeping of that person in detention without charge for a period not exceeding fourteen days.

(3) The summary court shall not hear an application for a warrant of detention unless the person to whom the application relates -

- (a) has been furnished with a copy of the affidavit; and
- (b) has been brought before the summary court for the hearing.

(4) The person to whom the application relates is entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented, the summary court shall adjourn the hearing to enable him to obtain representation, and he may be kept in detention during the adjournment.

(5) A person's detention is only justified for the purposes of this section or section 35B if -

- (a) his detention without charge is necessary to -
 - (i) secure or preserve evidence relating to an offence for which he is under arrest; or
 - (ii) allow investigating officers sufficient time to obtain the results of forensic testing in order to determine whether to charge the person with an offence; and
- (b) the investigation of the offence is being conducted diligently and expeditiously.

(6) An application for a warrant of detention may be made at any time before the expiry of ninety-six hours after the time when the person has been arrested.

(7) A warrant of detention shall -

- (a) state the time at which it is issued; and
- (b) authorize the keeping in detention of the person to whom it relates for the period stated in it.

(8) The period stated in a warrant of detention shall be such period, not exceeding fourteen days, as the summary court thinks fit, having regard to the evidence before it.

(9) An affidavit submitted in support of an application under this section shall state -

- (a) the nature of the offence for which the person to whom the application relates has been arrested;
- (b) the general nature of the evidence on which that person was arrested;
- (c) what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them; and
- (d) the reasons for believing the detention of that person is necessary while further inquiries are conducted.

(10) Where an application under this section is refused, the person to whom the application relates shall immediately be charged or released, either on bail or without bail.

(11) Where an application under this section is refused, no further application shall be made under this section in respect of the person to whom the refusal relates, unless it is supported by evidence which has come to light after the refusal.

(12) Upon expiry of a warrant of detention, the person to whom the warrant relates shall be released from detention, either on bail or without bail, unless he is charged.

(13) A person released under subsection (12) shall not

be re-arrested for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light.

(14) Subsection (13) does not prevent the arrest without a warrant of a person who, having been released on bail subject to conditions, breaches any of those conditions.

Extension of
warrant for
detention

35B. (1) On an application on oath made by a police officer of the rank of Chief Inspector or above and supported by an affidavit, the summary court may extend a warrant of detention issued under section 35A, if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) Subject to subsection (3), the period for which a warrant of detention may be extended shall be such period as the summary court thinks fit, having regard to the evidence before it.

(3) The period for extension of a warrant of detention together with the original period of detention granted under section 35A, shall not exceed a total of twenty-eight days.

(4) A warrant of detention, if extended under this section, shall be endorsed with a note of the period of the extension.

(5) Subsections (3), (4), and (9) of section 35A shall, with necessary changes, apply to an application made under this section as they apply to an application made under that section.

(6) Where an application under this section is refused, the person to whom the application relates shall immediately be charged or, subject to subsection (7), released, either on bail or without bail.

(7) A person need not be released under subsection (6) before the expiry of a warrant of detention issued in relation to him under section 35A.”.

The Firearms (Amendment) Bill, 2011

Amendment of section 39 - minimum sentences for certain offences

7. The principal Law is amended in section 39(1)(a) as follows -

- (a) by deleting the word “or” and substituting a comma; and
- (b) by inserting after the numerals “18(6)” the following “or 18A(2).”

Repeal and substitution of section 40 – restriction on eligibility for release on licence

8. The principal Law is amended by repealing section 40 and substituting the following section -

“Restriction on eligibility for release on licence

40A. Notwithstanding any other law, a person -

- (a) convicted of an offence under section 3(1) and sentenced under section 3(3);
- (b) convicted of an offence under section 15(1) and sentenced under section 15(5);
- (c) convicted of an offence and sentenced under section 18(6); or
- (d) convicted of an offence under section 18A(1) and sentenced under section 18A(2),

shall not be eligible to be released on licence.”.

Amendment of section 41 – forfeiture of firearms

9. The principal Law is amended in section 41 as follows -

- (a) in paragraph (d) by deleting the word “or”;
- (b) in paragraph (e) by deleting the comma and substituting a semi-colon and the word “or”; and
- (c) by inserting after paragraph (e) the following -
“(f) an offence under section 18A(1).”.

Passed by the Legislative Assembly the day of , 2011.

Speaker.

Clerk of the Legislative Assembly.