

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO OPEN CARRY LICENSE OF FIREARMS.

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

1           SECTION 1. Chapter 134, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§134-     License to openly carry a firearm. (a) The  
5 chiefs of police of the various counties shall issue licenses to  
6 openly carry firearms to persons qualified as provided in this  
7 section. These licenses shall be valid statewide for a period  
8 of three years. Each license shall bear a color photograph of  
9 the licensee. For the purposes of this section, "to openly  
10 carry a firearm" means a firearm, that is a pistol or a  
11 revolver, and that is holstered in such a manner that two to  
12 three inches of the holster is visible and the holstered firearm  
13 is not covered or enclosed so an observer cannot determine that  
14 it is a handgun without removing it from that which covers or  
15 encloses it or without opening, lifting, or removing that which  
16 covers or encloses it; and the term does not include an assault  
17 pistol or automatic firearm as defined in section 134-1. Any  
18 person in compliance with the terms of the license may openly



1 carry a firearm notwithstanding section 134-6. The licensee  
2 shall carry the license, together with valid identification, at  
3 all times in which the licensee is in actual possession of a  
4 firearm and shall display both the license and proper  
5 identification upon demand by a law enforcement officer.  
6 Violations of this subsection shall constitute a petty  
7 misdemeanor, provided that the maximum term of imprisonment  
8 shall be three days, and the maximum fine shall be \$500.

9 (b) The appropriate chief of police shall issue a license  
10 if the applicant:

- 11 (1) Is a citizen of the United States;
- 12 (2) Has resided in the State for at least six months or is  
13 a member of, or spouse of a member of, the military  
14 stationed in the State, or a retired law enforcement  
15 officer;
- 16 (3) Is twenty-three years of age or older;
- 17 (4) Is not ineligible to possess a firearm pursuant to  
18 section 134-7;
- 19 (5) Has demonstrated competence with a firearm by meeting  
20 the training requirements of 134-2(g), to include  
21 practical training in drawing and replacing a handgun  
22 from and to a holster. A photocopy of an affidavit



1 from the certified instructor or standard government  
2 form from the government agency providing said  
3 training, attesting to the successful completion of  
4 the training, shall constitute evidence of  
5 qualification under this paragraph.

6 (6) Does not chronically and habitually use intoxicating  
7 liquor or other substances to the extent that the  
8 person's normal faculties are impaired. It shall be  
9 presumed that an applicant chronically and habitually  
10 uses intoxicating liquor or other substances to the  
11 extent that the person's normal faculties are impaired  
12 if the applicant:

13 (A) Has been committed under the substance abuse  
14 provisions of chapter 334;

15 (B) Has been convicted of any offense relating to  
16 dangerous, harmful, or detrimental drug,  
17 intoxicating compound or liquor, or marijuana  
18 under part IV of chapter 712;

19 (C) Has been deemed a habitual offender under section  
20 291E-61.5; or

21 (D) Has had two or more convictions under section  
22 291E-61, or similar laws of any other state,



1           within the three-year period immediately  
2           preceding the date on which the application is  
3           submitted;

4       (7) Desires a legal means to openly carry a firearm for  
5       lawful purposes;

6       (8) Has not been adjudicated an incapacitated person as  
7       defined under section 554B-1 or 560:5-101, or similar  
8       laws of any other state, unless five years have  
9       elapsed since the applicant's restoration to capacity  
10       by court order;

11       (9) Has not been committed to a mental institution under  
12       chapter 334, or similar laws of any other state,  
13       unless the applicant produces a certificate from a  
14       licensed psychiatrist that the applicant has not  
15       suffered from disability for at least five years prior  
16       to the date of submission of the application, and is  
17       highly unlikely to relapse; and

18       (10) Has not had adjudication of guilt withheld or  
19       imposition of sentence suspended on any felony, unless  
20       three years have elapsed since probation or any other  
21       conditions set by the court have been fulfilled, or  
22       the record has been sealed or expunged.



1        (c) The appropriate chief of police may deny a license if  
2 the applicant has been found guilty of one or more crimes of  
3 violence constituting a misdemeanor, unless three years have  
4 elapsed since probation or any other conditions set by the court  
5 have been fulfilled, or the record has been sealed or expunged.  
6 The chief of police may deny a license if the applicant has been  
7 found guilty of one or more crimes of violence constituting a  
8 felony, unless the record has been expunged. The chief of  
9 police, may revoke a license if the licensee has been found  
10 guilty of one or more misdemeanor or felony crimes of violence  
11 within the preceding three years and shall revoke the license if  
12 so ordered by the court. The chief of police, upon notification  
13 by a law enforcement agency, a court, or the attorney general,  
14 and subsequent written verification, shall suspend a license or  
15 the processing of an application for a license if the licensee  
16 or applicant is arrested or formally charged with a crime that  
17 would disqualify the person from having a license under this  
18 section, until final disposition of the case.

19        (d) The application shall be completed, under oath, on a  
20 form prescribed by the attorney general, which shall be uniform  
21 throughout the State, and shall include:



- 1        (1) The name, address, place and date of birth, race, and
- 2        occupation of the applicant;
- 3        (2) A statement that the applicant is in compliance with
- 4        criteria contained within subsections (b) and (c);
- 5        (3) A statement that the applicant has been furnished a
- 6        copy of this chapter and is knowledgeable of its
- 7        provisions;
- 8        (4) A conspicuous warning that the application is executed
- 9        under oath and that a false answer to any question, or
- 10       the submission of any false document by the applicant,
- 11       subjects the applicant to criminal prosecution under
- 12       section 134-17(a); and
- 13       (5) A statement that the applicant desires an open carry
- 14       weapon or firearm license for lawful purposes.
- 15       (e) The applicant shall submit to the appropriate chief of
- 16 police:
- 17       (1) A completed application as described in subsection
- 18       (d);
- 19       (2) A nonrefundable license fee not to exceed \$100, if the
- 20       applicant has not previously been issued a license, or
- 21       a nonrefundable license fee not to exceed \$50 for
- 22       renewal of a license. Costs for processing the set of



1 fingerprints as required in paragraph (3) shall be  
2 borne by the applicant. If any individual described  
3 in section 134-11(a) (1) or (4) wishes to receive an  
4 open carry weapon or firearm license, the person is  
5 exempt from the background investigation and all  
6 background investigation fees, but shall pay the  
7 current license fees regularly required to be paid by  
8 nonexempt applicants; provided further that the person  
9 is exempt from the required fees and background  
10 investigation for a period of one year subsequent to  
11 the date of retirement of the person;

12 (3) A full set of fingerprints of the applicant  
13 administered by a law enforcement agency;

14 (4) A photocopy of a certificate or an affidavit or  
15 document as described in subsection (b) (7); and

16 (5) A full frontal view color photograph of the applicant  
17 taken within the preceding thirty days, in which the  
18 head, including hair, measures seven-eighths of an  
19 inch wide and one and one-eighth inches high.

20 (f) (1) The appropriate chief of police, upon receipt of  
21 the items listed in subsection (e), shall forward  
22 within three working days the full set of fingerprints



1 of the applicant to the attorney general and the  
2 Federal Bureau of Investigation for state and federal  
3 processing; provided the federal service is available.  
4 The cost of processing the fingerprints shall be  
5 payable to the State;

6 (2) The county police department shall provide  
7 fingerprinting service, if requested by the applicant,  
8 and may charge a fee not to exceed \$5 for this  
9 service;

10 (3) The appropriate county chief of police, within forty-  
11 five days after the date of receipt of the items  
12 listed in subsection (e), shall:

13 (A) Issue the license;

14 (B) Deny the application based solely on the ground  
15 that the applicant fails to qualify under  
16 subsection (b) or (c). Upon a denial of the  
17 application, the chief of police shall notify the  
18 applicant in writing, stating the ground for  
19 denial and informing the applicant of any right  
20 to a hearing pursuant to subsection (k); or

21 (C) Suspend the time limitation prescribed by this  
22 paragraph if the chief of police receives





1           criminal history information with no final  
2           disposition on a crime that may disqualify the  
3           applicant until receipt of the final disposition  
4           or proof of restoration of civil and firearm  
5           rights;

6           (4) If a legible set of fingerprints, as determined by the  
7           attorney general or the Federal Bureau of  
8           Investigation, cannot be obtained after two attempts,  
9           the attorney general shall determine eligibility based  
10          upon name checks conducted by the criminal justice  
11          data center; and

12          (5) If the appropriate county chief of police fails to  
13          issue or deny the license within forty-five days after  
14          the date of receipt of the items listed in subsection  
15          (e) or within such further time as may be necessary  
16          under paragraph (3)(C), the application shall be  
17          deemed denied and the applicant shall have the right  
18          to a hearing as provided in subsection (k).

19          (g) The attorney general shall maintain an automated  
20          listing of license holders and pertinent information, which  
21          shall be available on the internet, upon request, at all times



1 to all law enforcement agencies through the criminal justice  
2 data center.

3 (h) Within thirty days after the changing of a permanent  
4 address, or within thirty days after having a license lost or  
5 destroyed, the licensee shall notify the appropriate chief of  
6 police of the change or loss. Failure to notify the appropriate  
7 chief of police pursuant to this subsection shall constitute a  
8 noncriminal violation with a penalty of a \$25 fine.

9 (i) If an open carry firearm license is lost or destroyed,  
10 the license shall be automatically invalid, and the person to  
11 whom the license was issued, upon payment of \$15 to the  
12 appropriate chief of police, may obtain a duplicate, or  
13 substitute thereof, upon furnishing a notarized statement to the  
14 chief of police that the license has been lost or destroyed.

15 (j) A license issued under this section shall be suspended  
16 or revoked by the chief of police, pursuant to subsection (k),  
17 if the licensee is found to be or subsequently becomes  
18 ineligible under the criteria set forth in subsection (b) or  
19 (c).

20 (k) Any person denied a license, or who has a license  
21 suspended or revoked under this section shall have the right to  
22 a hearing on the denial, suspension, or revocation, subject to



1 the requirements for contested cases and judicial review under  
2 chapter 91.

3 (1) Not less than ninety days prior to the expiration date  
4 of the license, the appropriate county chief of police shall  
5 mail to each licensee a written notice of the expiration and a  
6 renewal form prescribed by the attorney general, which shall be  
7 uniform through the State. The licensee must renew the license,  
8 on or before the expiration date, by filing with the appropriate  
9 county chief of police the renewal form containing: a notarized  
10 affidavit stating that the licensee remains qualified pursuant  
11 to the criteria specified in subsections (b) and (c); a color  
12 photograph as specified in paragraph (e)(5); and the required  
13 renewal fee. The license shall be renewed upon receipt of the  
14 completed renewal form, color photograph, appropriate payment of  
15 fees, and, if applicable, a completed fingerprint card.  
16 Additionally, a licensee who fails to file a renewal application  
17 on or before its expiration date shall renew the license by  
18 paying a late fee of \$15. No license shall be renewed six  
19 months or more after its expiration date, and the license shall  
20 be deemed to be permanently expired. A person whose license has  
21 permanently expired may reapply for licensure; however, an  
22 application for licensure and fees pursuant to subsection (e)



1 shall be submitted, and a background investigation shall be  
2 conducted pursuant to this section. Persons who knowingly file  
3 false information pursuant to this subsection shall be subject  
4 to criminal prosecution under section 134-17(a).

5 (m) No license issued pursuant to this section shall  
6 authorize any person to openly carry a firearm into any:

7 (1) Place of nuisance pursuant to section 712-1270;

8 (2) Police station;

9 (3) Detention facility, prison, or jail;

10 (4) Courthouse, except where permitted by subsection (5)  
11 of this section;

12 (5) Courtroom, except that nothing in this section shall  
13 preclude a judge from lawfully carrying a weapon or  
14 determining who may openly carry a weapon in the  
15 courtroom;

16 (6) Polling place;

17 (7) Meeting of the governing body of a county or other  
18 political subdivision, the board of education, or any  
19 neighborhood board;

20 (8) Meeting of the legislature or a committee thereof;

21 (9) School administration building;



1       (10) Public school facility, state university, and  
2       community college, including the parking areas and  
3       grounds;

4       (11) Any establishment licensed to serve alcohol for on-  
5       premises consumption;

6       (12) Any establishment or event open to the public where  
7       the operator makes a reasonable request for licensee  
8       to give operator custody or remove the weapon from the  
9       premises;

10       (13) Designated federal security screening area within the  
11       passenger terminal and sterile area of any airport;  
12       and

13       (14) Locked psychiatric units.

14       Any person who violates any provision of this subsection  
15       shall be guilty of a class C felony.

16       (n) All funds received by a county police department  
17       pursuant to this section shall be deposited into the general  
18       fund of the respective county and shall be budgeted to the  
19       police department.

20       (o) The attorney general shall maintain statistical  
21       information on the number of licenses issued, revoked,  
22       suspended, and denied."



1           SECTION 2. Section 134-2, Hawaii Revised Statutes, is  
2 amended by amending subsection (e) to read as follows:

3           "(e) The permit application form shall be signed by the  
4 applicant and by the issuing authority. One copy of the permit  
5 shall be retained by the issuing authority as a permanent  
6 official record. Except for sales to dealers licensed under  
7 section 134-31, or dealers licensed by the United States  
8 Department of the Treasury, or law enforcement officers, or  
9 where a license is granted under sections 134-9 and 134-, or  
10 where any firearm is registered pursuant to section 134-3(a), no  
11 permit shall be issued to an applicant earlier than fourteen  
12 calendar days after the date of the application; provided that a  
13 permit shall be issued or the application denied before the  
14 twentieth day from the date of application. Permits issued to  
15 acquire any pistol or revolver shall be void unless used within  
16 ten days after the date of issue. Permits to acquire a pistol  
17 or revolver require a separate application and permit for each  
18 transaction. Permits issued to acquire any rifle or shotgun  
19 shall entitle the permittee to make subsequent purchases of  
20 rifles or shotguns for a period of one year from the date of  
21 issue without a separate application and permit for each  
22 acquisition, subject to the disqualifications under section 134-



1 7 and subject to revocation under section 134-13; provided that  
2 if a permittee is arrested for committing a felony or any crime  
3 of violence or for the illegal sale of any drug, the permit  
4 shall be impounded and shall be surrendered to the issuing  
5 authority."

6 SECTION 3. Section 134-6, Hawaii Revised Statutes, is  
7 amended by amending subsections (c), (d), and (e) to read as  
8 follows:

9 "(c) Except as provided in sections 134-5~~[and]~~, 134-9 and  
10 134-, all firearms and ammunition shall be confined to the  
11 possessor's place of business, residence, or sojourn; provided  
12 that it shall be lawful to carry unloaded firearms or ammunition  
13 or both in an enclosed container from the place of purchase to  
14 the purchaser's place of business, residence, or sojourn, or  
15 between these places upon change of place of business,  
16 residence, or sojourn, or between these places and the  
17 following: a place of repair; a target range; a licensed  
18 dealer's place of business; an organized, scheduled firearms  
19 show or exhibit; a place of formal hunter or firearm use  
20 training or instruction; or a police station. "Enclosed  
21 container" means a rigidly constructed receptacle, or a



1 commercially manufactured gun case, or the equivalent thereof  
2 that completely encloses the firearm.

3 (d) It shall be unlawful for any person on any public  
4 highway to carry on the person, or to have in the person's  
5 possession, or to carry in a vehicle any firearm loaded with  
6 ammunition; provided that this subsection shall not apply to any  
7 person who has in the person's possession or carries a pistol or  
8 revolver and ammunition therefor in accordance with a license  
9 issued as provided in section 134-9 or 134- .

10 (e) Any person violating subsection (a) or (b) shall be  
11 guilty of a class A felony. Any person violating this section  
12 by carrying or possessing a loaded firearm or by carrying or  
13 possessing a loaded or unloaded pistol or revolver without a  
14 license issued as provided in section 134-9 or 134- shall be  
15 guilty of a class B felony. Any person violating this section  
16 by carrying or possessing an unloaded firearm, other than a  
17 pistol or revolver, shall be guilty of a class C felony.

18 A conviction and sentence under subsection (a) or (b) shall  
19 be in addition to and not in lieu of any conviction and sentence  
20 for the separate felony; provided that the sentence imposed  
21 under subsection (a) or (b) may run concurrently or  
22 consecutively with the sentence for the separate felony."





1 SECTION 4. Section 134-11, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§134-11 Exemptions.** (a) Sections 134-6 to [~~134-9~~]134-,  
4 except section 134-7(f), shall not apply:

5 (1) To state and county law enforcement officers; provided  
6 that such persons are not convicted of an offense  
7 involving abuse of a family [or] household member  
8 under section 709-906;

9 (2) To members of the armed forces of the State and of the  
10 United States and mail carriers while in the  
11 performance of their respective duties if those duties  
12 require them to be armed;

13 (3) To regularly enrolled members of any organization duly  
14 authorized to purchase or receive the weapons from the  
15 United States or from the State, provided the members  
16 are either at, or going to or from, their places of  
17 assembly or target practice;

18 (4) To persons employed by the State, or subdivisions  
19 thereof, or the United States while in the performance  
20 of their respective duties or while going to and from  
21 their respective places of duty if those duties  
22 require them to be armed;



1           (5) To aliens employed by the State, or subdivisions  
2           thereof, or the United States while in the performance  
3           of their respective duties or while going to and from  
4           their respective places of duty if those duties  
5           require them to be armed;

6           (6) To police officers on official assignment in Hawaii  
7           from any state which by compact permits police  
8           officers from Hawaii while on official assignment in  
9           that state to carry firearms without registration.  
10          The governor of the State or the governor's duly  
11          authorized representative may enter into compacts with  
12          other states to carry out this paragraph.

13          (b) Sections 134-2 and 134-3 shall not apply to such  
14          firearms or ammunition that are a part of the official equipment  
15          of any federal agency.

16          (c) Sections 134-6, 134-8, [~~and~~]134-9, and 134- shall  
17          not apply to the possession, transportation, or use, with blank  
18          cartridges, of any firearm or explosive solely as props for  
19          motion picture film or television program production when  
20          authorized by the chief of police of the appropriate county  
21          pursuant to section 134-2.5 and not in violation of federal  
22          law."



1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

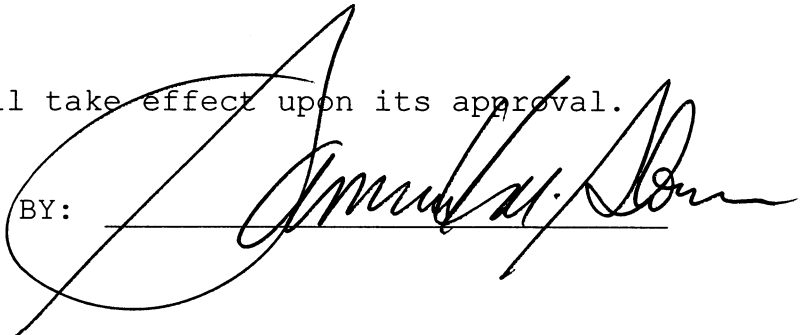
3 SECTION 6. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun, before its effective date.

6 SECTION 7. If any provision of this Act, or the  
7 application thereof to any person or circumstance is held  
8 invalid, the invalidity does not affect other provisions or  
9 applications of the Act, which can be given effect without the  
10 invalid provision or application, and to this end the provisions  
11 of this Act are severable.

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

13

INTRODUCED BY: \_\_\_\_\_



# SB. NO. 2529

**Report Title:**

Firearms; Open carry license.

**Description:**

Authorizes chiefs of police to issue licenses to openly carry a firearm. Details processes for license applications, renewals, and record keeping. Strictly prohibits openly carrying firearms under certain circumstances.

