



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 2204, H.D. 1, RELATING TO THE LIABILITY OF A FIREARM OWNER.

BEFORE THE:

SENATE COMMITTEE JUDICIARY AND LABOR

DATE: Tuesday, April 1, 2008 **TIME:** 10:00 AM

LOCATION: State Capitol Room 016
Deliver to: State Capitol, Room 219, 1 copy

TESTIFIER(S): Mark J. Bennett, Attorney General,
or Melina D. Sanchez, Deputy Attorney General

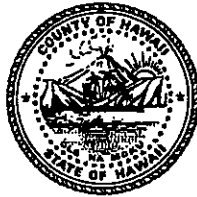
Chair Taniguchi and Members of the Committee:

The Department of the Attorney General supports this bill, which seeks to protect government entities from being held to a strict liability standard as "firearm owners." The passage of this bill will ensure that government entities will not be held strictly liable if a government employee wrongfully discharges a firearm owned by a government entity.

While the Department of the Attorney General supports this bill, we have concerns with the broad wording in subsection (d) referring to "any other tort liability" and ask that a clarifying amendment be made as follows:

"(d) As used in this section, "owner" shall not include government entities; provided that this shall not be construed to relieve government entities from any other tort liability that may be applicable to the government entity."

Harry Kim
Mayor



Dixie Kaetsu
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawaii

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March 31, 2008

The Honorable Brian T. Taniguchi
Committee on Judiciary
415 South Beretania Street
Honolulu, HI 96813

Dear Chair Taniguchi and Committee Members:

Re: HB 2204, HD1

The County of Hawai'i supports HB 2204, HD1, which would clarify that the provisions of Hawai'i Revised Statutes Section 663-9.5 do not apply to government entities.

HRS 663-9.5 currently states that an owner of a firearm is absolutely liable for personal injury or property damage. That means that, for example, if an off-duty officer uses his County issued firearm to intentionally harm someone, the County is strictly liable for that harm, even though the officer was not acting within his scope of employment. I do not believe that such result was intended by the Legislature when it originally enacted the statute.

The County of Hawai'i issues firearms to its police officers, but remains the technical "owner" of the firearms. I assume this is also true for the other counties, and with respect to law enforcement officers employed by the State of Hawai'i. Although the statute has a provision for an affirmative defense under certain circumstances, the defense is not sufficient to insulate the State and counties from liability under a strict reading of the statute.

If the State or counties are negligent in hiring or training their personnel, it would be appropriate for them to be held liable for resulting injuries, and that is provided for under the terms of HB 2204, HD1. But to impose absolute liability on the taxpayers in our communities is not fair by any measure.

The Honorable Brian Taniguchi
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March 31, 2008

Government entities do not have a choice as to whether they will own firearms. That being the case, I believe it is appropriate to hold them to a standard that is different from the standard imposed on other owners of firearms. HB 2204, HD1, makes it explicit that government is not relieved "from any other tort liability." We agree with that provision.

I urge passage of HB 2204, HD1.

Aloha,



Harry Kim
MAYOR

testimony

From: Maxwell Cooper [maxwell_cooper@msn.com]
Sent: Sunday, March 30, 2008 10:07 AM
To: testimony
Subject: Testimony HB2204, HD1, 4/1, 10am, Rm 16



Hawaii Rifle Association

State Affiliate of the National Rifle Association
Founded in 1857

February 25, 2008

Testimony on **HB2204, HD1 IN OPPOSITION**
Before the Senate Committee on Judiciary and Labor, on
Tuesday, April 1, 2008, 10:00 AM, Conference Room 016

Hon. Sen. Brian T. Taniguchi, Chair; Hon. Sen. Clayton Hee, Vice Chair,

Chair, Vice-Chair, Members,

HRA opposes this bill setting different standards for government for firearms safety and liability.

If anything, the bar should be higher for professionals who are authorized to carry firearms every day and whose duties may include use of lethal force with those firearms to protect themselves and the public.

Safe storage is part of the current statute. Surely government arsenals and employees should be *more* secure, and not excused from failure to report theft or loss.

Tort actions as we understand them are brought to seek compensation for unintentional acts or omissions leading to injury, including death, and property damage. We believe government should indemnify its citizens against such accidental occurrences. If the monetary costs are too high, then broad-based tort reform is needed.

We have great empathy for law enforcement officers on the street. They must occasionally make life and death decisions in seconds, and then they are second-guessed for years after. We think maintaining their indemnification by their government may help them better deal with this grave responsibility.

We respectfully suggest this bill be held.

Thank you for the opportunity to testify on behalf of HRA

Dr. Maxwell Cooper
Legislative Co-Chair
808 225-6944

LATE

TESTIMONY ON HOUSE BILL 2204, HD1: RELATING TO THE LIABILITY OF A FIREARM OWNER, IN OPPOSITION.

March 30, 2008

Joshua Hoblitt
2754 Kuilei St., Apt 2103
Honolulu, HI 96826
808-937-2217
testimony@hoblitt.com

COMMITTEE ON JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair
Senator Clayton Hec, Vice Chair

DATE: Tuesday, April 1, 2008
TIME: 10:00 a.m.
PLACE: Conference Room 016
State Capitol
415 South Beretania Street

Aloha Honorable Chair, Vice-Chair, and Members,

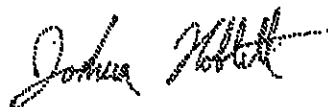
I am the Vice President of Lessons In Firearms Education¹, a non-profit organization dedicated to providing training in the safe ownership and usage of firearms. I am also a firearm owner in the state of Hawaii and wish to voice my **opposition** to HB2204, HD1.

All of L.I.F.E.'s firearms instructors "loan" personally registered firearms to students during class for instructional purposes. This is a necessity for basic firearm instruction in the state of Hawaii as there is no corporate registration of firearms. Under §663-9.5, all of our instructors are exposed to personal liability for the behavior of their students. This is true even if the student commits an act of gross negligence or malice with an instructor's firearm. This no different than the liability a County incurs by issuing sidearms to it's law enforcement officers.

§663-9.5 serves no valid public interest. Under criminal law it is already illegal to cause personal injury or property damage, steal a firearm, receive a stolen firearm, make a "straw man" purchase of a firearm for another, in most cases to carry a firearm, or engage in criminal conspiracy to intentionally supply a firearm to be used in a crime. There is even a specific statue about the possession of a firearm while committing a felony² (on top of illegal carry and the initial felony charge). Civilly one can already bring a tort against an individual for causing personal injury or property damage. The public is not served by making one person [or entity] absolutely civilly liable for the conduct of another.

I respectfully urge the committee to defer this bill and to support legislation in the next session to completely repeal §663-9.5.

Sincerely,



Joshua Hoblitt

¹ L.I.F.E. - <http://www.lifchawaii.com/>
² §706-660.1