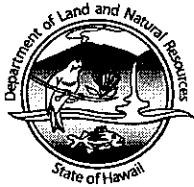


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
JUDICIARY**

**Thursday, March 1, 2012
2:01 PM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 679
RELATING TO FIREARMS**

House Bill 679 proposes to exempt National Rifle Association certified firearms instructors from absolute liability for injury or damage caused by discharge of their firearms during the course of providing training required to obtain a permit to acquire firearms. The Department of Land and Natural Resources (Department) takes no position on House Bill 679 as presently drafted. The Department however respectfully asks that this measure be amended to include: 1) Hunter Education Program volunteer and staff instructors while instructing the public and Non-government Organizations with program shooting exercises and activities; 2) Department employees and contracted instructors who provide in-house firearms training; and 3) Instructors affiliated with shooting ranges on state land, from absolute liability for injury or damage caused by discharge of their firearms during the course of providing training.

All Hunter Education Program instructors are trained and knowledgeable with firearms, firearms safety rules and practices. The Program's firearms and safety training in the free basic 12-hour hunter education course is deemed sufficient in scope and content to qualify a passing student for a handgun permit application in Hawaii, under Section 134-2(g)(1), Hawaii Revised Statutes. The Program since 1979 has certified 55,727 students in Hawaii and is in large measure responsible for the very low firearms accident and fatality rates in the State. Hawaii's Hunter Education certifications are recognized throughout the International Hunter Education Association (IHEA) membership that includes all of the United States, Canadian provinces, as well as foreign countries such as South Africa, Mexico, Australia, New Zealand, etc.

The Department also has firearms training classes and requirements for its staff that use firearms in the course of their duties. The Department sometimes provides that training in-house or contract services out. The Committee should consider covering the Department's training instructors needs in this measure.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Similarly, the Department is moving toward developing and operating shooting ranges on state lands similarly as is done by some counties. The likely scenario will be to contract out the operations to a qualified third party that would hire instructors or contract services directly with instructors. The Committee should consider covering these scenarios if appropriate in this measure.



Lessons in Firearms Education
P.O. Box 25271
Honolulu, Hawaii 96825
(808) 396-LIFE

Good Afternoon Chair Keith-Agaran and Vice-Chair Rhoads,

My Name is Bill Richter and I am the President of Lessons in Firearms Education or LIFE,

I am here to ask you to support H.B. 679.

LIFE is a not-for-profit organization dedicated to providing quality firearms training to Hawaii's citizens, and in particular, providing training that meets the current legal requirements to enable citizens to purchase a handgun. LIFE has been providing this training since the late 1980's and has probably trained more individuals than any other organization in the State of Hawaii.

All of LIFE's instructors are NRA certified and all of them volunteer their time and the use of their firearms to provide this required training. Currently, one of LIFE's biggest concerns is retaining these volunteer instructors. All too often, current and prospective instructors express concerns about the potential liability involved when they teach and provide their personal firearms for students training. Under the current "Absolute Liability" statues, they fear, with good reason, that they could be held liable in the event of an accident or other unfortunate incident.

You may hear testimony from a lawyer's group that the current language provides sufficient protections to firearms instructors. But, the fact that their group tends to profit from liability litigation would suggest that their assessment of the potential liability exposure to instructors is somewhat biased. Even more evidence of that bias is that three years ago the State and Counties asked for, and received the same exemption this bill would provide to instructors, for themselves. Certainly if the lawyers for the State and County believed that there was a legitimate concern over liability exposure to them, then our concerns are equally valid.

We believe that training new gun owners in the proper and safe handling of firearms is essential. In addition, since the training is required for those wishing to exercise their Second Amendment rights, it is critical that we not only maintain, but grow our instructor cadre so we can continue providing this invaluable, and State mandated, training. Passing H.B. 679 will allow instructors to focus on providing this training instead of unreasonable liability exposure that could result in them deciding the personal risks are too great and stop (or never begin) teaching.

Please help us ensure that we can continue to provide this vital service by passing H.B. 679.

Thank you.

Bill Richter
President,
Lessons in Firearms Education (LIFE)



Hawaii Rifle Association

State Affiliate of the National Rifle Association
Founded in 1857

February 29, 2012

Testimony on HB679 IN STRONG SUPPORT

Before: JUD, March 1, 1012, Rm 325, 2pm.

Hon. Chair, Co-Chair, Members,

HRA strongly supports this bill. The NRA Certified Instructors in HI should have this protection from "absolute" civil liability. They provide their own personal firearms for public use to obtain safety training per HRS 134-2(g) (4), a pre-requisite for obtaining a permit to acquire a handgun.

There is a precedent. HRS §663-9.5 (d) was amended in 2008, exempting the counties from absolute liability when an enforcement officer uses his gun "outside of the course and scope of employment as a law enforcement officer" showing that the counties were worried about government liability for a police officer's gun when he was in possession, because the gun is owned by the county. The amendment was presented by former Senate JUD Chair Andy Levine, representing the Maui Mayor's office, after an off duty Maui PD used his duty pistol to kill his wife. The plaintiffs bar supported the amendment.

The owner is "absolutely liable" and can only raise an affirmative defense that the firearm was not in his possession. This means that at the very least, an instructor could be forced to go to court to make the argument that he didn't possess the gun. In many cases, that argument would fail because the law recognizes the possibility of constructive possession without direct physical control. The Hawaii courts frequently cite Black's Law Dictionary:

"A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion over a thing, either directly or through another person or persons, is then in constructive possession of it." State v. Taylor, 2011 WL 6376646, *25 (Haw.2011)

In an NRA class where the instructor is supposed to direct the students as to exactly what they're supposed to be doing with the guns at any given time, an instructor certainly could be held to be in constructive possession of the guns at all times.

Further, the affirmative defense for non-possession only applies if the firearm wasn't in the owner's possession because it was stolen. The elements of subsection (b) are connected by an "and," meaning that they all have to apply for the affirmative defense to be valid. The second and third elements of subsection (b) both indicate the defense only applies when the firearm was taken without the owner's permission and the owner either reported the "theft" to police or would

not have discovered the theft in the exercise of reasonable care at the time of the incident giving rise to liability.

We also point out that the bill does not make it impossible to sue instructors teaching these classes. While the bill would relieve them of the special absolute liability created by sec. 663-9.5, they could still be sued in ordinary actions for negligence.

The current absolute liability is just that, absolute, and our dedicated Instructors need relief from it.

Thank you for the opportunity to testify on behalf of HRA.

Dr. Maxwell Cooper
225-6944

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 679**

Date: Thursday, March 1, 2012

Time: 2:01 pm

To: Chairman Gilbert Keith-Agaran and Members of the House Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to H.B. No. 679, relating to Firearms.

Proponents of bill state that its intent is to encourage NRA certified instructors to provide gun training required to obtain a handgun permit by exempting certified NRA instructors from the liability currently found in HRS section 663-9.5. However, this exemption is neither required nor desirable.

Gun ownership and use is a highly valued right and privilege in America. It is accompanied by a high degree of responsibility because of the extreme danger of severe injury and death associated with gun ownership and use. Approximately 75,000 people are shot with guns annually in America. About 30,000 people are killed. In Hawaii, about 30 people are shot to death every year. Section 663-9.5 provides gun ownership responsibilities commensurate with its hazards. The recent example of the third grade girl shot by a 45 caliber handgun carried by a fellow 9 year old student illustrates the reason for strict liability standards for public protection in Hawaii and many other states.

This bill is not logical in that it exempts the highly trained and skilled NRA instructor from liability under the statute while the untrained and unskilled student is liable. Logically, it should be the opposite if an exemption were to be considered. One would expect the NRA certified instructor to handle weapons with the greatest of skill

and care, while the novice student who is perhaps handling a gun for the first time would be expected to be less knowledgeable and therefore in greater need of an exemption.

Under this proposal, if an NRA certified instructor brought loaded guns with safety switches off to a training class and dropped a bag of guns which discharged and killed innocent bystanders, that instructor would be exempt from liability under the statute. Similarly, if the instructor unintentionally shot a student while demonstrating the firing of a gun, this bill would exempt the instructor from statutory liability.

Proponents of this bill have claimed in prior testimony that it is needed to eliminate cases of “excessive liability” and “unjustified liability,” yet cite no case or example of excessive or unjustified imposition of liability against NRA certified instructors. The current gun responsibility statute has been in effect for 18 years now and there does not seem to be an actual problem of excessive or unjustified liability for NRA certified instructors. Indeed, we are not aware of any case that imposed liability against an NRA certified instructor in connection with training classes in the 18 year history of this statute.

If there are specific circumstances related to NRA certified training sessions that merit exceptions to an owner’s responsibility to properly handle their weapons, these circumstances should be addressed specifically and dealt with narrowly rather than with a broad and complete exemption from liability.

Thank you very much for allowing me to testify in OPPOSITION to this measure. Please feel free to contact me should you have any questions or desire additional information.

Testimony for HB679 on 3/1/2012 2:01:00 PM

Testimony for HB679 on 3/1/2012 2:01:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Thursday, February 23, 2012 9:41 PM

To: JUDtestimony

Cc: hi0050@yahoo.com

Testimony for JUD 3/1/2012 2:01:00 PM HB679

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Charles Hirata

Organization: Individual

E-mail: hi0050@yahoo.com

Submitted on: 2/23/2012

Comments:

Testimony for HB679 on 3/1/2012 2:01:00 PM

Testimony for HB679 on 3/1/2012 2:01:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Friday, February 24, 2012 3:03 AM

To: JUDtestimony

Cc: heaviescc@gmail.com

Testimony for JUD 3/1/2012 2:01:00 PM HB679

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Brendon K Heal
Organization: Individual
E-mail: heaviescc@gmail.com
Submitted on: 2/24/2012

Comments:

Testimony for HB679 on 3/1/2012 2:01:00 PM

Testimony for HB679 on 3/1/2012 2:01:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 27, 2012 10:04 PM

To: JUDtestimony

Cc: laughlin@hawaii.rr.com

Testimony for JUD 3/1/2012 2:01:00 PM HB679

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Laughlin

Organization: L.I.F.E. (Lessons in Firearms Education)

E-mail: laughlin@hawaii.rr.com

Submitted on: 2/27/2012

Comments:

As a certified NRA Instructor in both Shotgun and Handgun, I would like you to support HB 679. When I teach a class or an individual, especially handguns, they do not yet possess the necessary training, documentation nor the affidavit in order to purchase a handgun, how else would they qualify for the 2 1/2 hours of live fire exercise to qualify for their certificate of completion? As an instructor I make many of my handguns available to the student in order that he or she may have the opportunity to try as many different firearm platforms as possible for them to make a more concerted choice of their own. It would be irresponsible for me to tell them to purchase what I personally like or think they should like. It is an individual decision, which I play a small part by providing those choices for them to use and get familiar with, while gaining the knowledge for me to pass them as competent to handle, shoot and ultimately to purchase said handguns.

By exempting NRA Instructors from "absolute liability" would be the prudent thing to do and how else will a student be able to pass a course for which he is not yet qualified to bring his own handgun, until he passes the course. I would think that I would sleep more comfortable at night knowing that I would not be held responsible for any accidents which I am fully prepared for, each and everytime a student approaches, touches and fires any firearm in my presence.

Sincerely,

Laughlin M. Tanaka

Certified NRA Instructor

1774 Hoohulu St.

Pearl City, HI 96782

Ph. 808-383-7961

To whom it may concern: HB 679

From: Gordon Oshiro

I support the passage of HB 679.

As a NRA certified instructor who teaches the required hand gun safety class to the public, I feel that myself and other instructors deserve the same protection as the State and County.

As I understand this process, the hand gun safety class was originally the responsibility of HPD. They declined and handed it off to others. We, the others, are taking their responsibility to provide the public with this class. We are also taking their liability for doing the classes. We deserve the same personal liability protection the State and County agencies have.

Passage is the right thing to do for the public.

Thank you for your time and effort in this important bill.

Testimony for HB679 on 3/1/2012 2:01:00 PM

Testimony for HB679 on 3/1/2012 2:01:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 29, 2012 2:40 AM

To: JUDtestimony

Cc: rglivinghi@aol.com

Testimony for JUD 3/1/2012 2:01:00 PM HB679

Conference room: 325

Testifier position: Support

Testifier will be present: Yes

Submitted by: Ronald G Livingston

Organization: V.P. LIFE HAWAII/ HRA board member

E-mail: rglivinghi@aol.com

Submitted on: 2/29/2012

Comments:

Please pass HB679. If HPD needs a special exemption, than us HRA certified instructors should have an exemption also. We instructors bring our own guns for the students to use.

James Bedient
1464 Molehu Dr
Honolulu, Hawaii 96818
808-423-8660

February 28, 2012

Aloha Members of the House Judiciary Committee,

I am writing to support passage of HB 679, Relating to Firearms.

In 2008, the most recent year with information published by the National Center for Health Statistics, an arm of the Centers for Disease Control and Prevention, accidental firearm deaths reached an all-time low. With an ever-growing population and ever more firearms sold, this can be attributed to improved safety in firearms design, and improved training.

In Hawaii, not only are new firearm purchasers required to participate in a safety class, but more and more people are seeking out continuing firearms education, such as that provided by the Hawaii Rifle Association. By passage of HB 679, the Legislature will be encouraging more people to participate as qualified firearms instructors, enlarging the pool of individuals conducting safety training. More qualified instructors means more safety training available which equals a safer environment for all.

Please lend your support to HB 679, in the interest of a safe and secure Hawaii.

Sincerely,

//SIGNED//

James Bedient

Testimony for HB679 on 3/1/2012 2:01:00 PM

Testimony for HB679 on 3/1/2012 2:01:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 28, 2012 6:10 PM

To: JUDtestimony

Cc: brianw@hawaii.rr.com

Testimony for JUD 3/1/2012 2:01:00 PM HB679

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Brian Wong
Organization: L.I.F.E./HRA/NRA
E-mail: brianw@hawaii.rr.com
Submitted on: 2/28/2012

Comments:

Dear Sirs,

I am writing to testify in support of this bill. As a Lessons In Firearms Education (L.I.F.E.) instructor, I believe I am volunteering to provide a safer environment for everyone. People have firearms, its a fact, as well as a basic right. By teaching others to act professionally, and safely is a benefit to all. Thank you for your time and consideration in this matter.

Regards,

Brian Wong

Testimony for HB679 on 3/1/2012 2:01:00 PM

Testimony for HB679 on 3/1/2012 2:01:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 28, 2012 9:20 AM

To: JUDtestimony

Cc: b.leong1851@gmail.com

Testimony for JUD 3/1/2012 2:01:00 PM HB679

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Brandon A. Leong

Organization: LIFE, Lessons In Firearms Education

E-mail: b.leong1851@gmail.com

Submitted on: 2/28/2012

Comments:

My name is Brandon Leong. I am an NRA Certified Instructor for Pistol, Rifle, Shotgun, NRA Certified Range Safety Officer and I am currently awaiting my certificate to teach NRA Personal Protection Inside The Home. Currently I volunteer and I'm a board member with a Nonprofit organization called LIFE (Lessons In Firearms Education) that holds monthly pistol training course at Koko Head Shooting Complex. LIFE is one of the few organizations that offer a pistol training course that is a requirement by law in order to purchase a handgun in the state of Hawaii. I am writing you today to let you know that I support and respectfully ask that you support HB 679 introduced by Representative Ken Ito. All of the instructors that teach with LIFE are all unpaid volunteers. All of the firearms that are used in our instruction are not owned by the organization, they are owned by the individual instructor. We are not volunteering to get paid, we do it because we have an interest in the sport of firearms shooting and hunting. We also feel that we have a duty as responsible gun owners to pass on and teach new and future gun owners safe gun handling and use. As instructors we are always on alert to keep our students and fellow instructors safe from harms way during our classes. While we are proactive and everything we teach is done so to prevent a negligent discharge, unfortunately they can occur. While passing HB 679 will exempt NRA instructors from the liability of personal injury or property damage during instruction it will not diminish the professionalism and safety awareness that we expect out of all of our instructors within class or while they are on their personal shooting time. If you have any questions or concerns please do not hesitate to contact me at b.leong1851@gmail.com.

Aloha,

Brandon Leong

Kerry S. Nagai
P.O. Box 23143
Honolulu, HI 96823-3143

Good Afternoon Chair Keith-Agaran and Vice-Chair Rhoads,

I support H.B. 679 and am asking you and the committee members to support and pass this bill.

As an NRA certified instructor who provides the use of my personal firearms to students during State mandated firearms training, I am concerned that I may be liable should, despite adhering to best practices in providing a safe training environment, a student cause injury or property damage with my firearm. This concern over liability has caused me to reconsider if I can continue providing this training and I know other instructors that are equally concerned.

I understand that the State and Counties asked for, and received, the very same exemption from liability that this bill would provide to NRA instructors. It seems only fair and reasonable that we should receive this same level of immunity.

I also understand that the group representing lawyers who profit from liability litigation are of the opinion that current language of the law already provides sufficient immunity for instructors. But, I would ask that you consider that opinion as extremely biased. Obviously the lawyers for the State and Counties believed they had too much liability exposure, as did the legislators who passed the bill exempting them. So, why would you believe that NRA instructors, operating under the same conditions are somehow different? The truth is that there is no difference. We have the same level of liability exposure and deserve the same immunity so we can continue providing this vital community service.

Please support and pass H.B. 679

Respectfully,

Kerry S. Nagai

Dear Representative Gilbert S. C. Keith-Agaran,

Thank you for attention to this matter. I know you are busy so I will keep this brief. I would like request that you schedule HB 679 for a hearing and respectfully urge you to support HB 679.

I am a volunteer instructor at the Lessons in Firearms Education events. Firearms is a hobby that I and my fellow instructors enjoy and we would like to share our knowledge. Volunteers like myself, are actively engaged in teaching safe gun handling to individuals within our community. Public awareness of safe gun practices such as storage and handling will reduce gun related accidents.

People who are new to firearms need qualified instructors. These instructors provide live, hands on training, which is essential to handling firearms safely. HB 679 will limit the liabilities for the instructors this in turn will promote quality gun instruction which will promote public gun safety which will promote a safer and healthier community.

Sincerely yours,

Lyle Hiromoto

Testimony for HB679 on 3/1/2012 2:01:00 PM

Testimony for HB679 on 3/1/2012 2:01:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Thursday, March 01, 2012 1:49 AM

To: JUDtestimony

Cc: kaneohegs@aol.com

Testimony for JUD 3/1/2012 2:01:00 PM HB679

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Daniel Oshima

Organization: Individual

E-mail: kaneohegs@aol.com

Submitted on: 3/1/2012

Comments:

I would like to express support for HB 679; to exempt NRA certified instructors from liabilities involving misuse of firearms by any students of such NRA certified instructors. Thank you.