

No. 20-15948

IN THE
**United States Court of Appeals
for the Ninth Circuit**

ANDREW TETER and JAMES GRELL,

Plaintiffs-Appellants,

v.

ANNE E. LOPEZ, in her Official Capacity as the Attorney General of the State of
Hawai‘i and DARRYL NG, in his Official Capacity as the State Sheriff Division
Administrator,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Hawai‘i
Honorable Alan C. Kay, Senior United States District Judge
(Civil No. 19-cv-00183-ACK-WRP)

SUGGESTION OF MOOTNESS AND MOTION TO REMAND

ANNE E. LOPEZ

Attorney General of the State of Hawai‘i

KALIKO‘ONĀLANI D. FERNANDES

Solicitor General

NICHOLAS M. MCLEAN

First Deputy Solicitor General

STATE OF HAWAI‘I

DEPARTMENT OF THE ATTORNEY GENERAL

425 Queen Street

Honolulu, HI 96813

(808) 586-1360

kaliko.d.fernandes@hawaii.gov

NEAL KUMAR KATYAL

REEDY C. SWANSON

DANA A. RAPHAEL

HOGAN LOVELLS US LLP

555 Thirteenth Street, N.W.

Washington, D.C. 20004

(202) 637-5600

neal.katyal@hoganlovells.com

Counsel for Defendants-Appellees Anne E. Lopez and Darryl Ng

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
BACKGROUND	1
STANDARD FOR RELIEF	4
ARGUMENT	5
CONCLUSION	9
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

	<u>Page(s)</u>
CASES:	
<i>Board of Trs. of Glazing Health & Welfare Tr. v. Chambers</i> , 941 F.3d 1195 (9th Cir. 2019) (en banc)	4, 5, 6
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	8
<i>In re Bunker Ltd. P’ship</i> , 820 F.2d 308 (9th Cir. 1987)	4, 5
<i>Lund v. Cowan</i> , 5 F.4th 964 (9th Cir. 2021)	7
<i>McDonald v. Lawson</i> , 94 F.4th 864 (9th Cir. 2024)	5, 6
<i>New York State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022).....	2, 8
<i>New York State Rifle & Pistol Ass’n v. City of New York</i> , 140 S. Ct. 1525 (2020).....	4, 7
<i>Peruta v. County of San Diego</i> , 824 F.3d 919 (9th Cir. 2016) (en banc)	8
<i>Platt v. Moore</i> , 15 F.4th 895 (9th Cir. 2021)	6
<i>United States v. Munsingwear, Inc.</i> , 340 U.S. 36 (1950).....	5
STATUTES:	
Hawai‘i Rev. Stat. § 134-53.....	6
Hawai‘i Rev. Stat. § 134-53(a)	1, 7
LEGISLATIVE MATERIAL:	
Act Relating to Weapons	1, 4-8

INTRODUCTION

As part of a general revision to its weapons laws, the Hawai‘i Legislature has amended the State’s restrictions on butterfly knives. Act 21, which took effect on May 13, 2024, repeals prohibitions on “manufactur[ing], sell[ing], transfer[ing], possess[ing], or transport[ing]” butterfly knives. Act 21 § 6. Those former prohibitions have been replaced with a much narrower restriction on the concealed carry and criminal use of butterfly knives, which is conduct that the Plaintiffs in this case never sought to engage in. Under controlling Supreme Court and Ninth Circuit precedent, this case is now moot. Hawai‘i therefore respectfully asks this Court to vacate the judgment below and remand with directions to dismiss the complaint as moot, in line with this Court’s settled practice.¹

BACKGROUND

When Plaintiffs’ complaint in this case was filed in 2019, Hawai‘i law “completely and categorically bann[ed] the manufacturing, sale, transfer, possession, and transport of butterfly knives in any context.” ER-15; *see* Hawai‘i Rev. Stat. § 134-53(a) (1999). Plaintiffs challenged those provisions as an alleged violation of the Second Amendment, stating that they wished “to purchase, own, possess and carry a butterfly knife for self-defense both in [the] home and outside

¹ Counsel for Plaintiffs has indicated that Plaintiffs will oppose this motion.

[the] home.” ER-139; ER-137 (Plaintiffs’ declarations); *accord* ER-157 (parallel allegation in the complaint). Plaintiffs sought prospective declaratory and injunctive relief against enforcement of the complete “ban on the acquisition, possession, carrying or use of butterfly knives.” ER-158-160.

Plaintiffs did not seek to engage in concealed carry of butterfly knives. To the contrary: Plaintiffs “insist[ed]” that they challenged the law as “unconstitutional *only* as applied to law-abiding citizens seeking to possess butterfly knives in their homes or to *openly carry* them in public.” ER-15 (District Court opinion) (second emphasis added); *see also* ER-62 (“The Court: So your position, then, I take it, is you’re challenging both the right to possess a butterfly knife in your home, as well as the right to carry it openly in public? [Plaintiffs’ Counsel]: Yes, Your Honor.”). Plaintiffs have acknowledged in their complaint and throughout this litigation that States “retain the ability presumptively to regulate the manner of carrying arms,” ER-143, and that “concealed carry can be banned when the government allows for the open carry of arms,” Appellants’ Supp. Br. 20; *see also id.* at 19 (purporting to distinguish historical laws because they “dealt with the concealed carry of bowie knives and other weapons, not bans on possession”); Reh’g Opp. 15 (acknowledging that “historical laws . . . prohibit[ed] the concealed carry of certain arms” and asserting that “a concealed carry law” should be analyzed differently from a restriction on possession because

under a concealed-carry ban “people retain the right to openly carry those arms, and they of course remain free to keep them as well”).

The District Court, ruling before *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), assumed without deciding that butterfly knives were within the Second Amendment’s scope and sustained the law by applying intermediate scrutiny. *See* ER-26-44. *Bruen* abrogated means-end scrutiny while this appeal was pending, but a motions panel denied Hawai‘i’s request to remand. ECF No. 66. A merits panel subsequently ruled that Hawai‘i’s butterfly-knife restrictions were unconstitutional based on its conclusions that “the possession of butterfly knives is conduct protected by the plain text of the Second Amendment,” and that Hawai‘i had “not demonstrated that its ban on butterfly knives is consistent with this Nation’s historical tradition of regulating arms.” Op. 4. The panel reached this conclusion, in part, because it determined that “[t]he vast majority of the statutes cited by Hawai‘i prohibited the *concealed carry*” of weapons—*not* open carry or “possession outright.” Op. 25, 28.

Hawai‘i sought rehearing to correct multiple errors in the panel’s analysis, which conflicted with Supreme Court and Ninth Circuit precedent. This Court granted rehearing.

Separately, the Hawai‘i Legislature—like the legislatures of many States in recent years—has been working to update, clarify, and revise its weapons laws.

Act 21 is a comprehensive amendment of multiple weapons regulations. Among other things, it clarifies certain aspects of Hawai‘i’s firearms permitting requirements, expands the prohibition on using firearms to commit felonies to include misdemeanors, eliminates open-carry prohibitions on certain weapons like daggers and blackjacks, clarifies the removal of open- and concealed-carry prohibitions on billies, removes certain obsolete statutory language, and eliminates certain prohibitions related to switchblades.

As relevant here, Act 21 eliminates the former prohibition on “manufactur[ing], sell[ing], transfer[ring], possess[ing], or transport[ing]” butterfly knives. Act 21 § 6. The Legislature replaced those provisions with a much narrower restriction on “knowingly carr[y]ing concealed” butterfly knives and knowingly using, possessing, or intending to use a butterfly knife “while engaged in the commission of a . . . separate felony or misdemeanor.” *Id.*

STANDARD FOR RELIEF

Courts “presume that the repeal, amendment, or expiration of legislation will render an action challenging the legislation moot.” *Board of Trs. of Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195, 1199 (9th Cir. 2019) (en banc); *see also New York State Rifle & Pistol Ass’n v. City of New York*, 140 S. Ct. 1525, 1526 (2020) (per curiam) (holding that claims seeking “declaratory and injunctive relief against enforcement” of New York City firearm rule were moot after the rule

was amended); *In re Bunker Ltd. P'ship*, 820 F.2d 308, 312 (9th Cir. 1987) (“Where new legislation represents a complete substitution for the law as it existed at the time of a district court’s decision, arguments based upon the superseded part are moot.”). The party asserting that a case is *not* moot bears the burden of showing that there is a “reasonable expectation”—“founded in the record . . . rather than on speculation alone”—“that the legislative body is likely to enact the same or substantially similar legislation in the future.” *Glazing Health*, 941 F.3d at 1197, 1199.

When a civil action becomes moot while the appeal process is ongoing, federal courts’ “established practice” is to vacate the judgment below and remand with instructions to dismiss the complaint. *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950); *see also Glazing Health*, 941 F.3d at 1200; *McDonald v. Lawson*, 94 F.4th 864, 870 (9th Cir. 2024).

ARGUMENT

This case is moot. In this litigation, Plaintiffs sought prospective declaratory and injunctive relief against the enforcement of Hawai‘i’s butterfly-knife regulations to the extent that state law prevented them from “possess[ing] butterfly knives in their homes or . . . *openly carry[ing]* them in public.” ER-15 (emphasis added). Act 21 allows Plaintiffs to do precisely that.

Because Act 21 is a legislative repeal of the challenged provisions, it “creates a presumption that the action is moot.” *Glazing Health*, 941 F.3d at 1197. This “new legislation represents a complete substitution for the law as it existed at the time of [the] district court’s decision.” *In re Bunker*, 820 F.2d at 312. The Hawai‘i Legislature has no plans to reenact a prohibition on the possession of butterfly knives, and there is no record evidence that could possibly establish any reasonable expectation that the old version of Hawai‘i Revised Statute § 134-53 will be readopted. Moreover, unlike where mootness hinges on some future action, like a delayed legislative effective date, *cf. McDonald*, 94 F.4th at 870, Act 21 took effect on the day it was signed, repealing and replacing the only aspects of the law that Plaintiffs challenged. As a result, “there is no longer an ongoing case or controversy for [this Court] to resolve.” *McDonald*, 94 F.4th at 870. The Court should follow its ordinary practice by vacating the judgment and directing the District Court to dismiss the complaint. *See Glazing Health*, 941 F.3d at 1197.

Plaintiffs did not seek relief allowing them to engage in the concealed carry of butterfly knives (or to use butterfly knives for criminal purposes). In fact, during this litigation, Plaintiffs acknowledged that “concealed carry can be banned when the government allows for the open carry of arms.” Appellants’ Supp. Br. 20; *see also id.* at 19 (Plaintiffs’ attempt to distinguish historical laws because they “dealt with the concealed carry of bowie knives and other weapons, not bans on

possession”); Reh’g Opp. 15 (acknowledging that “historical laws . . . prohibit[ed] the concealed carry of certain arms”).²

Even if Plaintiffs now wish to change their position in an effort to challenge the prohibition on the concealed carrying of butterfly knives—contrary to their repeated assertions—that would still require a remand. Where there has been “a change in the legal framework governing the case,” and “the plaintiff may have some residual claim under the new framework that was understandably not asserted previously,” the “practice is to vacate the judgment and remand for further proceedings in which the parties may, if necessary, amend their pleadings or develop the record more fully.” *City of New York*, 140 S. Ct. at 1526. That approach makes particular sense here because the parties’ briefing before the district court (1) applied the pre-*Bruen* standard and (2) focused heavily on the possession ban that Act 21 has fully repealed. *See, e.g.*, Reh’g Opp. 3 (Plaintiffs’ assertions that “Hawaii Revised Statute §134-53(a) makes it a crime—with no exceptions—to possess a butterfly knife” and that “[t]he question before the panel

² Plaintiffs also did not seek damages for any past injury. *See* ER-158-160. Nor could they have. The only defendants in this litigation are state officers sued in their official capacities (*see* ER-141-142), who are protected by sovereign immunity “from liability in damages, including nominal damages.” *Platt v. Moore*, 15 F.4th 895, 910 (9th Cir. 2021). The Eleventh Amendment similarly prohibits “retrospective declaratory relief.” *Lund v. Cowan*, 5 F.4th 964, 969 (9th Cir. 2021).

was whether that lone-of-its-kind law violates the Second Amendment” (citation and quotation marks omitted)).

Even assuming, *arguendo*, that butterfly knives are equally as protected under the Second Amendment as handguns, *Bruen* recognized a historical consensus that “*the manner of public carry was subject to reasonable regulation.*” 597 U.S. at 59. This meant, among other things, that “States could lawfully eliminate one kind of public carry—concealed carry—so long as they left open the option to carry openly,” *id.*, which describes Act 21 to a tee. *Bruen* thus confirmed this Court’s prior conclusion that “even assuming that [a State’s] restrictions on public *open* carry violate the Second Amendment . . . , it does not follow that [a State’s] restrictions on public *concealed* carry violate the Amendment.” *Peruta v. County of San Diego*, 824 F.3d 919, 941-942 (9th Cir. 2016) (en banc) (emphases added); *see also District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (stating “that the right [protected in the Second Amendment] was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose” and that “the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues”).

If Plaintiffs nevertheless intend to challenge the amended statute, Hawai‘i should have an opportunity on remand to develop a record that addresses the law

that is currently in effect—including through expert testimony—rather than litigate the question on a record developed by the parties that was focused on a now-repealed statute.

CONCLUSION

For the foregoing reasons, the Court should vacate the District Court’s judgment and remand with instructions to dismiss this case as moot.

May 14, 2024

ANNE E. LOPEZ
Attorney General of the State of Hawai‘i
KALIKO‘ONĀLANI D. FERNANDES
Solicitor General
NICHOLAS M. MCLEAN
First Deputy Solicitor General
STATE OF HAWAI‘I
DEPARTMENT OF THE ATTORNEY GENERAL
425 Queen Street
Honolulu, HI 96813
(808) 586-1360
kaliko.d.fernandes@hawaii.gov

Respectfully submitted,

/s/ Neal Kumar Katyal
NEAL KUMAR KATYAL
REEDY C. SWANSON
DANA A. RAPHAEL
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600
neal.katyal@hoganlovells.com

Counsel for Defendants-Appellees Anne E. Lopez and Darryl Ng

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 1903 words. This motion complies with the typeface and the type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

/s/ Neal Kumar Katyal
Neal Kumar Katyal

CERTIFICATE OF SERVICE

I certify that on May 14, 2024, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system

/s/ Neal Kumar Katyal
Neal Kumar Katyal



GOV. MSG. NO. 1121

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

May 13, 2024

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on May 13, 2024, the following bill was signed into law:

HB2342 HD1 SD2

RELATING TO WEAPONS.
ACT 021

Sincerely,

A handwritten signature in black ink that reads "Josh Green M.D." in a cursive style.

Josh Green, M.D.
Governor, State of Hawai'i

on

MAY 13 2024

ACT 021

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2024
STATE OF HAWAII

H.B. NO. 2342
H.D. 1
S.D. 2

A BILL FOR AN ACT

RELATING TO WEAPONS.

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

1 SECTION 1. The purpose of this Act is to clarify, update,
2 and revise Hawaii's laws relating to weapons in order to address
3 hazards to public health, safety, and welfare.

4 SECTION 2. Chapter 134, Hawaii Revised Statutes, is
5 amended by adding to part I a new section to be appropriately
6 designated and to read as follows:

7 "§134- Carrying of a firearm in the commission of a
8 separate misdemeanor; penalty. (a) It shall be unlawful for a
9 person to knowingly carry on the person or have within the
10 person's immediate control a firearm while engaged in the
11 commission of a separate misdemeanor offense, whether the
12 firearm was loaded or not, and whether operable or not; provided
13 that a person shall not be prosecuted under this section when
14 the separate offense is an offense otherwise defined by this
15 chapter or is the offense of criminally negligent storage of a
16 firearm under section 707-714.5.



1 (b) A conviction and sentence under this section shall be
2 in addition to and not in lieu of any conviction and sentence
3 for the separate misdemeanor; provided that the sentence imposed
4 under this section may run concurrently or consecutively with
5 the sentence for the separate misdemeanor.

6 (c) Any person violating this section shall be guilty of a
7 class C felony.

8 (d) For the purposes of this section, "misdemeanor" does
9 not include a petty misdemeanor."

10 SECTION 3. Section 134-2, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§134-2 Permits to acquire.** (a) No person shall acquire
13 the ownership of a firearm, whether usable or unusable,
14 serviceable or unserviceable, modern or antique, registered
15 under prior law or by a prior owner or unregistered, either by
16 purchase, gift, inheritance, bequest, or in any other manner,
17 whether procured in the State or imported by mail, express,
18 freight, or otherwise, until the person has first procured from
19 the chief of police of the county of the person's place of
20 business or, if there is no place of business, the person's
21 residence or, if there is neither place of business nor



1 residence, the person's place of sojourn, a permit to acquire
2 the ownership of a firearm as prescribed in this section. When
3 title to any firearm is acquired by inheritance or bequest, the
4 foregoing permit shall be obtained before taking possession of
5 the firearm; provided that upon presentation of a copy of the
6 death certificate of the owner making the bequest, any heir or
7 legatee may transfer the inherited or bequested firearm directly
8 to a dealer licensed under section 134-31 or licensed by the
9 United States Department of Justice without complying with the
10 requirements of this section.

11 (b) The permit application form shall:

12 (1) Include:

13 (A) The applicant's name, address, gender, height,
14 weight, date of birth, place of birth, country of
15 citizenship, social security number, alien or
16 admission number;

17 (B) Information regarding the applicant's mental
18 health history;

19 (C) Any aliases or other names previously used by the
20 applicant;



- 1 (D) Information that is or may be relevant in
2 determining whether the applicant is disqualified
3 under section 134-7 from the ownership,
4 possession, or control of a firearm; and
- 5 (E) Information that is or may be relevant in
6 determining whether the applicant lacks the
7 essential character or temperament necessary to
8 be entrusted with a firearm as set forth in
9 subsection (e); and
- 10 (2) Require the fingerprinting and photographing of the
11 applicant by the police department of the county of
12 registration; provided that where fingerprints and a
13 photograph are already on file with the department,
14 these may be waived.
- 15 (c) An applicant for a permit shall:
- 16 (1) Sign a waiver at the time of application, allowing the
17 chief of police of the county issuing the permit or a
18 designee of the chief of police access to all records
19 that have a bearing on the mental health of the
20 applicant; and



- 1 (2) Identify any health care providers who possess or may
2 possess the records described in paragraph (1).
- 3 (d) The chief of police of the respective counties shall
4 issue permits to acquire firearms to:
- 5 (1) Citizens, nationals, or lawful permanent residents of
6 the United States of the age of twenty-one years or
7 more;
- 8 (2) Duly accredited official representatives of foreign
9 nations;
- 10 (3) Duly commissioned law enforcement officers of the
11 State who are aliens; provided that any law
12 enforcement officer who is the owner of a firearm and
13 who is an alien shall transfer ownership of the
14 firearm within forty-eight hours after termination of
15 employment from a law enforcement agency;
- 16 (4) Aliens of the age of eighteen years or more for use of
17 rifles and shotguns for a period not exceeding sixty
18 days, upon a showing that the alien has first procured
19 a hunting license under chapter 183D, part II; and
- 20 (5) Aliens of the age of twenty-one years or more for use
21 of firearms for a period not exceeding six months,



1 upon a showing that the alien is in training for a
2 specific organized sport-shooting contest to be held
3 within the permit period.

4 The attorney general may adopt rules, pursuant to chapter
5 91, as to what constitutes sufficient evidence that an alien is
6 in training for a sport-shooting contest.

7 Notwithstanding any law to the contrary and upon joint
8 application, the chief of police may, upon request, issue
9 permits to acquire firearms jointly to spouses who otherwise
10 qualify to obtain permits under this section.

11 (e) The permit application form shall be signed by the
12 applicant and issuing authority. One copy of the permit shall
13 be retained by the issuing authority as a permanent official
14 record. Except for sales to dealers licensed under section 134-
15 31, dealers licensed by the United States Department of Justice,
16 law enforcement officers, or where any firearm is registered
17 pursuant to section 134-3(a), no permit shall be issued to an
18 applicant earlier than fourteen calendar days after the date of
19 the application; provided that a permit shall be issued or the
20 application denied before the fortieth day from the date of
21 application. Permits issued to acquire any pistol or revolver



Page 7

H.B. NO. 2342
H.D. 1
S.D. 2

1 shall be void unless used within thirty days after the date of
2 issue. Permits to acquire a pistol or revolver shall require a
3 separate application and permit for each transaction. Permits
4 issued to acquire any rifle or shotgun shall entitle the
5 permittee to make subsequent purchases of rifles or shotguns for
6 a period of one year from the date of issue without a separate
7 application and permit for each acquisition, subject to the
8 disqualifications under section 134-7 and revocation under
9 section 134-13; provided that if a permittee is arrested for
10 committing a felony, a crime of violence, a criminal offense
11 relating to firearms, or for the illegal sale or distribution of
12 any drug, the permit shall be impounded and surrendered to the
13 issuing authority. The issuing authority shall perform an
14 inquiry on an applicant by using the International Justice and
15 Public Safety Network, including the United States Immigration
16 and Customs Enforcement query, National Crime Information
17 Center, and National Instant Criminal Background Check System,
18 pursuant to section 846-2.7 before any determination to issue a
19 permit or to deny an application is made. The issuing authority
20 shall not issue a permit to acquire the ownership of a firearm
21 if an applicant is disqualified under section 134-7 from the



1 ownership, possession, or control of a firearm, or if the
2 issuing authority determines that issuance would not be in the
3 interest of public health, safety, or welfare because the person
4 lacks the essential character or temperament necessary to be
5 entrusted with a firearm. In determining whether a person lacks
6 the essential character or temperament necessary to be entrusted
7 with a firearm, the issuing authority shall consider whether the
8 person poses a danger of causing a self-inflicted bodily injury
9 or unlawful injury to another person, as evidenced by:

- 10 (1) Information from a health care provider indicating
11 that the person has had suicidal or homicidal thoughts
12 or tendencies within the preceding five years;
- 13 (2) Statements or actions by the person indicating any
14 dangerous propensity or violent animus toward one or
15 more individuals or groups, including groups based on
16 race, color, national origin, ancestry, sex, gender
17 identity, gender expression, sexual orientation, age,
18 disability, religion, or any other characteristic, and
19 the propensity or animus is of a nature or to an
20 extent that would objectively indicate to a reasonable
21 observer that it would not be in the interest of the



1 public health, safety, or welfare for the person to
2 own, possess, or control a firearm or ammunition; or
3 (3) Other information that would lead a reasonable,
4 objective observer to conclude that the person
5 presents or would present a danger to the community as
6 a result of acquiring or possessing a firearm or
7 intends or is likely to use a firearm for an unlawful
8 purpose or in an unlawful manner.

9 (f) In all cases where a pistol or revolver is acquired
10 from another person within the State, the permit shall be signed
11 in ink by the person to whom title to the pistol or revolver is
12 transferred and shall be delivered to the person who is
13 transferring title to the firearm, who shall verify that the
14 person to whom the firearm is to be transferred is the person
15 named in the permit and enter on the permit in the space
16 provided the following information: name, address, and
17 telephone number of the person who transferred the firearm;
18 name, address, and telephone number of the person to whom the
19 title to the firearm was transferred; names of the manufacturer
20 and importer; model; type of action; caliber or gauge; and
21 serial number, as applicable. The person who is transferring



1 title to the firearm shall sign the permit in ink and cause the
2 permit to be delivered or sent by registered mail to the issuing
3 authority within forty-eight hours after transferring the
4 firearm.

5 In all cases where receipt of a firearm is had by mail,
6 express, freight, or otherwise from sources outside the State,
7 the person to whom the permit has been issued shall make the
8 prescribed entries on the permit, sign the permit in ink, and
9 cause the permit to be delivered or sent by registered mail to
10 the issuing authority within forty-eight hours after taking
11 possession of the firearm.

12 In all cases where a rifle or shotgun is acquired from
13 another person within the State, the person who is transferring
14 title to the rifle or shotgun shall submit, within forty-eight
15 hours after transferring the firearm, to the authority that
16 issued the permit to acquire, the following information, in
17 writing: name, address, and telephone number of the person who
18 transferred the firearm; name, address, and telephone number of
19 the person to whom the title to the firearm was transferred;
20 names of the manufacturer and importer; model; type of action;
21 caliber or gauge; and serial number, as applicable.



1 (g) No person shall be issued a permit under this section
2 for the acquisition of a firearm unless the person, within the
3 four years before the issuance of the permit, has completed:

4 (1) An approved hunter education course as authorized
5 under section 183D-28, unless the applicant seeks to
6 acquire a pistol or revolver, in which case the
7 applicant shall complete a training satisfying the
8 requirements of paragraph (2), (3), or (4);

9 (2) A firearms safety or training course or class
10 available to the general public offered by a law
11 enforcement agency of the State or of any county;

12 (3) A firearms safety or training course offered to law
13 enforcement officers, security guards, investigators,
14 deputy sheriffs, or any division or subdivision of law
15 enforcement or security enforcement by a state or
16 county law enforcement agency; or

17 (4) A firearms training or safety course or class
18 conducted by a firearms instructor certified or
19 verified by the chief of police of the respective
20 county or a designee of the chief of police or
21 certified by a nongovernmental organization approved



1 for such purposes by the chief of police of the
2 respective county or a designee of the chief of
3 police, or conducted by a certified military firearms
4 instructor; provided that the firearms training or
5 safety course or class provides, at a minimum, a total
6 of at least two hours of firing training at a firing
7 range and a total of at least four hours of classroom
8 instruction, which may include a video, that focuses
9 on:

10 (A) The safe use, handling, and storage of firearms
11 and firearm safety in the home, as well as a
12 component on mental health, suicide prevention,
13 and domestic violence issues associated with
14 firearms and firearm violence; and

15 (B) Education on the firearm laws of the State.

16 An affidavit signed by the certified or verified
17 firearms instructor who conducted or taught the
18 course, providing the name, address, and phone number
19 of the instructor and attesting to the successful
20 completion of the course by the applicant shall
21 constitute evidence of certified successful completion



1 under this paragraph; provided that an instructor
2 shall not submit an affidavit signed by the instructor
3 for the instructor's own permit application.

4 (h) No person shall sell, give, lend, or deliver into the
5 possession of another any firearm except in accordance with this
6 chapter.

7 (i) No fee shall be charged for permits, or applications
8 for permits, under this section, except for a single fee
9 chargeable by and payable to the issuing county in an amount
10 equal to the fee charged by the Hawaii criminal justice data
11 center pursuant to section 846-2.7. In the case of a joint
12 application, the fee provided for in this section may be charged
13 to each person. If an application under this section is denied,
14 the chief of police or a designee of the chief of police shall
15 notify the applicant of the denial in writing, stating the
16 ground or grounds for the denial and informing the applicant of
17 the right to seek review of the denial through a hearing
18 pursuant to subsection (k).

19 (j) In all cases where a permit application under this
20 section is denied because an applicant is prohibited from
21 owning, possessing, receiving, or controlling firearms under



Page 14

H.B. NO. 2342
H.D. 1
S.D. 2

1 federal or state law, the chief of police of the applicable
2 county shall, within ten business days from the date of denial,
3 send written notice of the denial, including the identity of the
4 applicant and the reasons for the denial, to the:

- 5 (1) Prosecuting attorney in the county where the permit
6 was denied;
7 (2) Attorney general;
8 (3) United States Attorney for the District of Hawaii; and
9 (4) Director of corrections and rehabilitation.

10 If the permit to acquire was denied because the applicant
11 is subject to an order described in section 134-7(f), the chief
12 of police shall, within three business days from the date of
13 denial, send written notice of the denial to the court that
14 issued the order.

15 When the director of corrections and rehabilitation
16 receives notice that an applicant has been denied a permit
17 because of a prior criminal conviction, the director of
18 corrections and rehabilitation shall determine whether the
19 applicant is currently serving a term of probation or parole,
20 and if the applicant is serving such a term, send written notice
21 of the denial to the applicant's probation or parole officer.



1 (k) If an application under this section is denied, a
2 person or entity aggrieved by the denial shall be entitled to a
3 hearing before the chief of police of the appropriate county or
4 a designee of the chief of police. A person or entity aggrieved
5 by the denial shall submit a request for a hearing in writing to
6 the chief of police of the appropriate county no later than
7 thirty days following the date of the decision or determination
8 notice. The hearing shall constitute a contested case hearing
9 for purposes of chapter 91. Following the hearing and final
10 decision, an aggrieved party shall be entitled to a judicial
11 review proceeding in state circuit court in accordance with
12 section 91-14.

13 (l) The permit application form and the waiver form
14 required under this section shall be prescribed by the issuing
15 authority.

16 (m) The requirements of subsection (g) shall not apply to
17 an applicant for a permit to acquire a rifle or shotgun who:

18 (1) Has been issued a hunter education certificate under
19 section 183D-28 that is valid for the life of the
20 person; or



1 (2) Has received a written exemption under section 183D-
2 28."

3 SECTION 4. Section 134-51, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§134-51 Deadly or dangerous weapons; prohibitions;**

6 **penalty.** (a) Any person, not authorized by law, who knowingly
7 carries concealed [~~upon~~] on the [~~person's self or within any~~
8 ~~vehicle used or occupied by the person or who is found armed~~
9 ~~with]~~ person, or in a bag or other container carried by the
10 person, any dirk, dagger, blackjack, [~~slug shot, billy,~~] metal
11 knuckles, [~~pistol,~~] or other deadly or dangerous weapon shall be
12 guilty of a misdemeanor [~~and may be immediately arrested without~~
13 warrant by any sheriff, police officer, or other officer or
14 person. Any weapon, above enumerated, upon conviction of the
15 one carrying or possessing it under this section, shall be
16 summarily destroyed by the chief of police or sheriff.];
17 provided that this subsection shall not apply to a billy.

18 (b) [~~Whoever~~] Any person who knowingly possesses or
19 intentionally uses or threatens to use a dirk, dagger,
20 blackjack, metal knuckles, or other deadly or dangerous weapon,
21 or a billy, while engaged in the commission of a [~~crime~~]



1 separate felony or misdemeanor shall be guilty of a class C
2 felony.

3 (c) A conviction and sentence under subsection (b) shall
4 be in addition to and not in lieu of any conviction and sentence
5 for the separate felony or misdemeanor; provided that the
6 sentence imposed under subsection (b) may run concurrently or
7 consecutively with the sentence for the separate felony or
8 misdemeanor.

9 (d) Upon conviction of a person for carrying or possessing
10 a deadly or dangerous weapon pursuant to this section, the
11 deadly or dangerous weapon shall be summarily destroyed by the
12 chief of police or sheriff.

13 (e) Notwithstanding any provision to the contrary, this
14 section shall not apply to:

- 15 (1) A firearm, whether loaded or not, and whether operable
- 16 or not;
- 17 (2) A switchblade knife as defined in section 134-52;
- 18 (3) A butterfly knife as defined in section 134-53; or
- 19 (4) An electric gun as defined in section 134-81.



1 (f) For purposes of this section, "billy" includes a
2 cudgel, truncheon, police baton, collapsible baton, billy club,
3 or nightstick.

4 (g) It shall be a defense to a prosecution under
5 subsection (a) that a person was lawfully present in the
6 person's own home at the time of the offense."

7 SECTION 5. Section 134-52, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§134-52 Switchblade knives; prohibitions; penalty.** (a)
10 Whoever knowingly [~~manufactures, sells, transfers, possesses, or~~
11 ~~transports in the State~~] carries concealed on the person, or in
12 a bag or other container carried by the person, any switchblade
13 knife [~~, being any knife having a blade which opens automatically~~
14 ~~(1) by hand pressure applied to a button or other device in the~~
15 ~~handle of the knife, or (2) by operation of inertia, gravity, or~~
16 ~~both,~~] shall be guilty of a misdemeanor.

17 (b) Whoever knowingly possesses or intentionally uses or
18 threatens to use a switchblade knife while engaged in the
19 commission of a [~~crime~~] separate felony or misdemeanor shall be
20 guilty of a class C felony [~~-~~]; provided that a person shall not



1 be prosecuted under this subsection when the separate felony or
2 misdemeanor is an offense otherwise defined by this chapter.

3 (c) A conviction and sentence under subsection (b) shall
4 be in addition to and not in lieu of any conviction and sentence
5 for the separate felony or misdemeanor; provided that the
6 sentence imposed under subsection (b) may run concurrently or
7 consecutively with the sentence for the separate felony or
8 misdemeanor.

9 (d) It shall be a defense to a prosecution under
10 subsection (a) that the person was lawfully present in the
11 person's own home at the time of the offense.

12 (e) For the purposes of this section, "switchblade knife"
13 means any knife having a blade that opens automatically by:

14 (1) Hand pressure applied to a button or other device in
15 the handle of the knife; or

16 (2) Operation of inertia, gravity, or both."

17 SECTION 6. Section 134-53, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[~~§~~§134-53~~]~~ **Butterfly knives; prohibitions; penalty.**

20 (a) Whoever knowingly [~~manufactures, sells, transfers,~~
21 ~~possesses, or transports in the State]~~ carries concealed on the



1 person, or in a bag or other container carried by the person,
2 any butterfly knife[, being a knife having a blade encased in a
3 split handle that manually unfolds with hand or wrist action
4 with the assistance of inertia, gravity or both,] shall be
5 guilty of a misdemeanor.

6 (b) Whoever knowingly possesses or intentionally uses or
7 threatens to use a butterfly knife while engaged in the
8 commission of a [~~crime~~] separate felony or misdemeanor shall be
9 guilty of a class C felony[-]; provided that a person shall not
10 be prosecuted under this subsection when the separate felony or
11 misdemeanor is an offense otherwise defined by this chapter.

12 (c) A conviction and sentence under subsection (b) shall
13 be in addition to and not in lieu of any conviction and sentence
14 for the separate felony or misdemeanor; provided that the
15 sentence imposed under subsection (b) may run concurrently or
16 consecutively with the sentence for the separate felony or
17 misdemeanor.

18 (d) It shall be a defense to a prosecution under
19 subsection (a) that the person was lawfully present in the
20 person's own home at the time of the offense.



1 (e) For the purposes of this section, "butterfly knife"
2 means any knife having a blade encased in a split handle that
3 manually unfolds with hand or wrist action with the assistance
4 of inertia, gravity, or both."

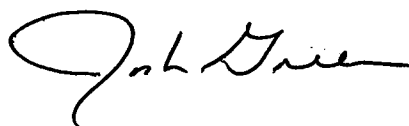
5 SECTION 7. Every provision in this Act and every
6 application of each provision in this Act is severable from each
7 other. If any application of any provision in this Act to any
8 person or group of persons or circumstances is determined by any
9 court to be invalid, the remainder of this Act and the
10 application of the Act's provisions to all other persons and
11 circumstances shall not be affected because it is the
12 legislature's intent that all valid applications shall remain in
13 force.

14 SECTION 8. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and enforcement
16 proceedings that were begun before its effective date.

17 SECTION 9. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 10. This Act shall take effect upon its approval.

APPROVED this 13th day of May , 2024



GOVERNOR OF THE STATE OF HAWAII



HB No. 2342, HD 1, SD 2

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 18, 2024
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2024.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives

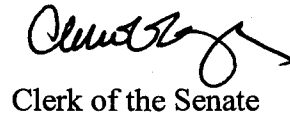
H.B. No. 2342, H.D. 1, S.D. 2

THE SENATE OF THE STATE OF HAWAI'I

Date: April 9, 2024
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2024.


President of the Senate


Clerk of the Senate