



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2392, RELATING TO AMMUNITION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, February 1, 2008 **TIME:** 4:00 PM

LOCATION: State Capitol, Room 325
Deliver to: Committee Clerk, Room 302, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance M. Goto, Deputy Attorney General

Dear Chair Waters and Members of the Committee:

The Department of the Attorney General respectfully opposes this measure.

The purpose of this bill is to require all ammunition of specified caliber manufactured or sold in Hawaii that is capable of use in handguns, including assault pistols, to be coded to assist law enforcement in identifying and prosecuting offenders who use firearms in the commission of crimes. The bill also requires the Department of the Attorney General to establish a statewide database to track coded ammunition.

While the concept of maintaining a database to enable law enforcement to trace ammunition used in the commission of heinous crimes back to a certain criminal is a commendable one, we believe there are legal and practical problems presented by this bill that prevent the workable implementation of such a concept. This bill may be an instance where a firearm measure is unduly burdensome. As we understand it, if enacted into law, this bill will require each round of ammunition in Hawaii that is capable of being used in handguns to be imprinted with a code that will theoretically allow a particular round to be traced back to the particular person who owns the round. Implementation is to begin on January 1, 2009, and all non-conforming ammunition in the State is to be disposed of by the

following year, although there appears to be no provision to address noncompliance.

The first potential problem we see with this bill is the legal question of whether the bill violates the Interstate Commerce Clause of the federal Constitution. There are no major ammunition manufacturers in this State. If this bill is enacted into law, the possibility exists that there may be legal challenges from ammunition manufacturers outside this State questioning whether Hawaii has the legal authority to require coding of all handgun ammunition that they seek to market in this State. What the outcome of such litigation would be is uncertain, but what can be said is that the argument that this bill may unduly burden interstate commerce is not a frivolous claim that can be disregarded.

Moreover, for such a coding system to work, the assumption is that each round will always be traceable to the proper person who owns the round. That presumption would not hold up under a number of different scenarios. To begin with, there is the often recurring problem of a burglar breaking into someone's home, and stealing not only the firearms that happen to be in the home, but also any available ammunition. Secondly, the bill does not seem to address instances where transfers of ammunition from one owner to another occur. The bill does not seem to provide for instances where someone gives, shares, or sells ammunition to someone else. A third problem is ammunition that might be smuggled into the State from states that do not have coded ammunition, or uncoded ammunition that may remain in the possession of individuals throughout this State. And finally, a person determined to circumvent the law and who is intent on committing murder would probably not be deterred from somehow obtaining uncoded ammunition or obliterating the coding since to do so only constitutes a misdemeanor.

Another difficulty we see with implementing this bill is that, unless other larger states join Hawaii in implementing such a law, there is no assurance that manufacturers would want to comply with

the law. Manufacturers may simply decide to opt out of doing business in Hawaii. An unknown fact is what the cost of coding the ammunition is. Would manufacturers be able to recover the cost of imprinting each round sold in Hawaii, or, even if it could be done, would the cost of coding be passed on to consumers in Hawaii, so as to make the purchase of such ammunition prohibitive?

Finally, again, because of what may be a relatively small market in Hawaii, there is a danger that the cost of establishing and maintaining the infrastructure for coded ammunition would far outrun the revenues taken in by registering the ammunition, thereby making such a database not cost-effective.

For all of the foregoing reasons, the Department of the Attorney General respectfully requests that this measure be held.