

JAN 28 2015

A BILL FOR AN ACT

RELATING TO THE ACQUISITION OF FIREARMS BY LAWFUL PERMANENT
RESIDENT ALIENS.

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

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

3 (1) By amending subsection (b) to read as follows:

4 "(b) The permit application form shall include the
5 applicant's name, address, sex, height, weight, date of birth,
6 place of birth, country of citizenship, social security number,
7 alien or admission number, alien status, and information
8 regarding the applicant's mental health history and shall
9 require the fingerprinting and photographing of the applicant by
10 the police department of the county of registration; provided
11 that where fingerprints and photograph are already on file with
12 the department, these may be waived. The permit application
13 form shall also require an applicant who is a permanent resident
14 alien or nonresident alien to provide the police department with
15 documentary proof of alien status."

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1 (2) By amending subsection (d) to read as follows:

2 "(d) The chief of police of the respective counties may
3 issue permits to acquire firearms to citizens and lawful
4 permanent resident aliens of the United States of the age of
5 twenty-one years or more, or duly accredited official
6 representatives of foreign nations, or duly commissioned law
7 enforcement officers of the State who are nonresident aliens;
8 provided that any law enforcement officer who is the owner of a
9 firearm and who is [~~an~~] a nonresident alien shall transfer
10 ownership of the firearm within forty-eight hours after
11 termination of employment from a law enforcement agency. The
12 chief of police of each county may issue permits to nonresident
13 aliens of the age of eighteen years or more for use of rifles
14 and shotguns for a period not exceeding sixty days, upon a
15 showing that the nonresident alien has first procured a hunting
16 license under chapter 183D, part II. The chief of police of
17 each county may issue permits to nonresident aliens of the age
18 of twenty-one years or more for use of firearms for a period not
19 exceeding six months, upon a showing that the nonresident alien
20 is in training for a specific organized sport-shooting contest
21 to be held within the permit period. The attorney general shall
22 adopt rules, pursuant to chapter 91, as to what constitutes
23 sufficient evidence that [~~an~~] a nonresident alien is in training

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1 for a sport-shooting contest. Notwithstanding any provision of
2 the law to the contrary and upon joint application, the chief of
3 police may issue permits to acquire firearms jointly to spouses
4 who otherwise qualify to obtain permits under this section."

5 SECTION 2. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun, before the effective date of this Act.

8 SECTION 3. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

S.B. NO. 1071

Report Title:

Acquisition of Firearms by Lawful Permanent Resident Aliens

Description:

Makes it clear that the police may grant applications to acquire firearms to lawful permanent resident aliens.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO THE ACQUISITION OF FIREARMS BY LAWFUL PERMANENT RESIDENT ALIENS.

PURPOSE: To make it clear that the police may grant applications to acquire firearms to lawful permanent resident aliens.

MEANS: Amend section 134-2(b) and (d), Hawaii Revised Statutes (HRS).

JUSTIFICATION: On September 17, 2014, United States District Judge, Michael Seabright, granted plaintiff's motion for summary judgment and for permanent injunctive relief in the case of *Steve Fotoudis v. City and County of Honolulu, Louis Kealoha, Chief of the Honolulu Police Department in his official capacity; David Louie, Attorney General of Hawaii, in his official capacity*, in Civ. No. 14-00333 JMS-RLP. Fotoudis was a lawful permanent resident alien who had moved to Hawaii from Australia. He attempted to apply for a permit to acquire a firearm, but the Honolulu Police Department did not allow him to do so because he was not a citizen of the United States, and section 134-2(d), Hawaii Revised Statutes (HRS), provides that, with limited exceptions inapplicable to Fotoudis, police chiefs may only issue permits to acquire firearms to citizens of the United States. In evaluating Fotoudis' action brought under 42 U.S.C. §1983, the court found the following:

This classification violates the equal protection clause of the U.S. Constitution. HRS §134-2(d) is thus unconstitutional as-applied to Fotoudis (and other lawful permanent resident

aliens), and Defendants are therefore permanently enjoined from denying Fotoudis the opportunity (1) to apply for a permit to acquire firearms, and (2) to obtain such permit, if he otherwise meets the qualifications of state law, as specifically set forth in the Conclusion of this Order.

The court also found the following:

Similarly, interpreting §134-2(d) to deny Fotoudis the opportunity to apply for (and to obtain, if otherwise qualified) a permit to acquire firearms, solely because he is not a U.S. citizen, also violates the Second Amendment. Lawful permanent residents such as Fotoudis "are firmly on the path to full citizenship," and "are entitled to a wide array of constitutional rights."

Upon making those findings, the court ordered the following:

Defendants and/or their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of this injunction, are enjoined from precluding lawful permanent resident aliens residing in the State of Hawaii from applying for a permit to acquire firearms as set forth in HRS §134-2(d). Defendants must also . . . insofar as Fotoudis is determined to be fit and qualified to acquire firearms, to thereafter issue in the normal course to Fotoudis the permit contemplated by HRS §134-2, vesting Fotoudis with the same rights and privileges to acquire firearms as those of United States citizens who obtain permit(s) pursuant to §134-2.

This bill seeks to amend section 134-2, HRS,

to address the constitutional concerns raised by the court in the Fotoudis case.

Impact on the public: Lawful permanent resident aliens will be allowed to apply for permits to acquire firearms.

Impact on the department and other agencies: This bill will provide the county police departments with clear guidance on how to address firearm applications by aliens.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.