

JAN 27 2021

A BILL FOR AN ACT

RELATING TO THE ACQUISITION OF FIREARMS.

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, and information regarding the
8 applicant's mental health history and shall require the
9 fingerprinting and photographing of the applicant by the police
10 department of the county of registration; provided that where
11 fingerprints and a photograph are already on file with the
12 department, these may be waived. The permit application form
13 shall also require an applicant who is a permanent resident
14 alien or a non-citizen United States national to provide the
15 police department with documentary proof of alien status or
16 United States national 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, United States
4 nationals, and lawful permanent residents of the United States
5 of the age of twenty-one years or more, or duly accredited
6 official representatives of foreign nations, or duly
7 commissioned law enforcement officers of the State who are
8 aliens; provided that any law enforcement officer who is the
9 owner of a firearm and who is an alien shall transfer ownership
10 of the firearm within forty-eight hours after termination of
11 employment from a law enforcement agency. The chief of police
12 of each county may issue permits to aliens of the age of
13 eighteen years or more for use of rifles and shotguns for a
14 period not exceeding sixty days, upon a showing that the alien
15 has first procured a hunting license under chapter 183D, part
16 II. The chief of police of each county may issue permits to
17 aliens of the age of twenty-one years or more for use of
18 firearms for a period not exceeding six months, upon a showing
19 that the alien is in training for a specific organized sport-
20 shooting contest to be held within the permit period. The
21 attorney general shall adopt rules, pursuant to chapter 91, as
22 to what constitutes sufficient evidence that an alien is in
23 training for a sport-shooting contest. Notwithstanding any law

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1 to the contrary and upon joint application, the chief of police
2 may issue permits to acquire firearms jointly to spouses who
3 otherwise qualify to obtain permits under this section."

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

7 SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY:



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BY REQUEST

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S.B. NO. 1043

Report Title:

Acquisition of Firearms

Description:

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

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.

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

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 Fotoudis v. City & Cty. of Honolulu, 54 F. Supp. 3d 1136 (D. Haw. 2014). 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." Id. At 1141.

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. Id. At 1145.

More recently, Judge Seabright extended his ruling in Fotoudis to United States nationals, based on a new lawsuit, Nickel v. Connors, No. 20-cv-00330 JMS-RT (D. Haw. Sept. 21, 2020) filed by a Hawaii resident born in American Samoa. Nickel was unable

to apply for a permit to acquire a firearm because, although he was a U.S. national, he was not a U.S. citizen.

This bill seeks to amend section 134-2, HRS, to address the constitutional concerns raised by the court in the Fotoudis and Nickel cases.

Impact on the public: Lawful permanent resident aliens and U.S. nationals 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 and U.S. nationals.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.