

A Bill for an Act Relating to Firearms.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the public safety of its residents is of paramount concern. Indeed, the responsibility to “provide for the safety of the people from crimes against persons and property” is specified in the State Constitution. Addressing gun violence is a key part of this responsibility and consequently the State has enacted comprehensive and robust gun protection laws.

The legislature further finds that Hawai‘i’s laws have led to Hawai‘i being a national leader in low rates of gun violence incidents. Whereas nationwide there are annually more than thirty thousand deaths related to gun violence, in Hawai‘i there are less than fifty gun violence deaths per year at a rate of less than five gun deaths per every one hundred thousand people. Hawai‘i cumulatively ranks number one as the state with the lowest number of deaths and the lowest rate of deaths due to gun violence. According to the Centers for Disease Control and Prevention annual statistics, Hawai‘i had the lowest number of deaths and lowest death rate attributed to gun violence in 2020. In 2019, Hawai‘i had the second lowest number of deaths and the fourth lowest death rate. In 2018, it had the second lowest deaths and third lowest death rate; in 2017, the lowest deaths and lowest death rate; in 2016, the second lowest deaths and fourth lowest death rate; in 2015, the second lowest deaths and second lowest death rate; and in 2014, the second lowest deaths and lowest death rate.

The legislature recognizes that the ruling by the United States District Court for the District of Hawai‘i in *Yukutake v. Connors*, 554 F.Supp.3d 1074 (D. Haw. 2021), invalidated the State’s ten-day expiration period for a permit to acquire a pistol or revolver and the requirement that all firearms be physically inspected at the time of registration. While the State’s appeal is pending, the law related to the ten-day permit expiration period continues to be in effect as the court stayed its holding, whereas the physical inspection requirement was not stayed and thus its enforcement is suspended.

The legislature finds that the laws discussed in *Yukutake* furthered the important government interest of public safety and in a manner that is substantially related to that interest. The legislature supports efforts to appeal the decision to the Ninth Circuit Court of Appeals. In the meantime, the legislature cannot allow for all firearms to be registered without inspection. Even if the *Yukutake* ruling is upheld, Hawai‘i’s important interest in protecting public safety justifies the physical inspection of certain narrow categories of firearms at the time of registration. This interest is also based on the extensive knowledge and experience of the Hawai‘i law enforcement community and legislature regarding registration requirements, including serial numbers, from the time these requirements were originally adopted in Hawai‘i in the early twentieth century, e.g., via Act 85, Session Laws of the Territory of Hawaii 1907.

The legislature also finds that around the time of the Second Amendment’s ratification in 1791, and in the decades preceding, laws requiring inspection of personal weapons existed at the federal level and throughout the original states. These laws were part of militia requirements, which mandated that individuals subject to militia duty — typically white men in a specified age range — must acquire their own arms and ammunition. The laws described the weapons required and provided for regular inspection by militia officers. *Yukutake*, 554 F.Supp.3d at 1087. The historical tradition of requiring in-person inspection of

firearms provides a robust historical basis for Hawai'i's law. Just as militia officers would inspect (and frequently record) members' personal weapons to ensure that they comported with militia weaponry requirements, Hawai'i's law requires police officers to inspect and register guns in person to verify that they comport with the information provided in the registration form. In fact, by mandating regular and repeated in-person firearm inspections, these historical laws imposed a much greater burden on militia-eligible gun owners than would such a comparatively modest one-time check. *Id.* at 1087.

The legislature finds moreover that a central function of Hawai'i's law and the historical laws is the same: to ensure that the firearm an individual possesses matches the applicable specifications of, in Hawai'i's situation, the registration requirements, and in the historical cases of the militia laws. Requiring people to bring the firearm to be registered for physical inspection ensures that the registration information is accurate, ensures that the firearm complies with Hawai'i law, and confirms the identity of the firearm so as to facilitate tracing by law enforcement. The physical inspection requirement has existed in Hawai'i law and practice for many years. Section 134-3, Hawaii Revised Statutes, specifically exempts firearms dealers from being "required to have the firearms physically inspected by the chief of police at the time of registration", and non-dealer registrants are not exempted. It was understood that non-dealer registrants needed to bring their firearms for physical inspection at time of registration. *Yukutake*, however, focused on new language added to the statute by Act 74, Session Laws of Hawaii 2020, that went into effect on September 15, 2020, that explicitly codified the requirement that "[a]ll other firearms and firearm receivers registered" be physically inspected at the time of registration.

In this Act, the legislature is requiring physical inspection of certain firearms over a three-year period while the *Yukutake* appeal proceeds. The temporary inspection requirements are narrowly tailored and limited to specific situations that necessitate inspection: firearms that were not manufactured with serial numbers, or "ghost guns"; firearms transported into the State from another jurisdiction; and firearms obtained in private sales and transfers. The legislature further finds that an in-person inspection when registering a firearm serves an additional significant, substantial, and important government interest by minimizing the risk of prosecution to firearms owners who are not aware of the illegality of their firearms.

Regarding the first category to be inspected under this Act, firearms and firearm receivers that are assembled without serial numbers or other identification markings, these weapons circumvent the State's otherwise strict firearm permitting and registration laws and pose a danger to public safety inasmuch as they are untraceable by law enforcement. The lack of identification on the firearms and firearm receivers led to the label "ghost guns". Ghost guns are the fastest-growing gun safety problem facing our country and becoming a weapon of choice for violent criminals, gun traffickers, and other legally prohibited persons. In 2020, Hawai'i enacted Act 74 that requires the permanent engraving or embedding of a registration number on the firearm receiver by the person registering the firearm, to ensure public safety. The legislature finds that it is necessary for police departments to inspect the engraving or embedding, even when done by a licensed dealer, to ensure that it is done legibly, permanently, and accurately. Due to human error, it is not enough to simply assume that the registration number is properly engraved or embedded and also properly recorded in registration records, and it is the experience of Hawai'i firearm officials that mistakes can and have been made in the recording of serial numbers. Thus, a physical inspection of the firearm is necessary to address that risk.

The second category to be inspected under this Act, firearms brought into the State from other jurisdictions, will safeguard against persons possessing firearms that are illegal under Hawai'i law. The legislature finds that firearms laws in other states are often very different from the firearms laws in Hawai'i and there is an important public safety interest in discovering illegal firearms brought into Hawai'i, as well as an important government interest in doing so in a manner that minimizes unnecessary prosecution of those who unknowingly do so. For example, pursuant to sections 134-8 and 134-8.5, Hawaii Revised Statutes, assault pistols, automatic firearms, rifles and shotguns with certain barrel lengths, certain large capacity magazines, and bump fire stocks, among other things, are not allowed in Hawai'i. A person who is not a licensed dealer may not be aware that the features, modifications, or accessories of their firearms are illegal in Hawai'i and may attempt to bring these firearms into the State.

Similarly, for the third category that will be required to submit to inspection under this Act, firearms transferred or obtained in private sales, people participating in private sales or transfers of firearms may not be aware that the firearms are illegal. Unlike licensed firearm dealers who are required to keep detailed, audited records and are familiar with Hawai'i's firearm laws, private sellers can be unfamiliar with the technical details of the firearms and with the requirements of Hawai'i law. They may not know which features, modifications, or accessories are illegal under Hawai'i law.

Therefore, the legislature finds that an in-person inspection at the time of registration is supported by the significant, substantial, and important government interest in protecting public safety. The legislature further finds that the requirement reasonably fits that objective, and is in fact narrowly tailored, because it is limited to certain specific situations that have an exceptional need for inspection, e.g., ghost guns, firearms coming from out of state, and firearms in private sales and transfers. The legislature further finds that in-person inspection at registration serves an additional significant, substantial, and important government interest in minimizing the risk that gun owners who are not aware of the illegality of their firearms will be prosecuted.

The purpose of this Act is to enact a three-year physical inspection requirement at the time of registration for firearms that were not manufactured with serial numbers, or ghost guns, firearms transported into the State from another jurisdiction, and firearms obtained in private sales and transfers.

SECTION 2. Section 134-3, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

“(a) Every resident or other person arriving in the State who brings or by any other manner causes to be brought into the State a firearm of any description, whether usable or unusable, serviceable or unserviceable, modern or antique, shall register and submit to physical inspection the firearm within five days after arrival of the person or of the firearm, whichever arrives later, with the chief of police of the county of the person's place of business or, if there is no place of business, the person's residence or, if there is neither a place of business nor residence, the person's place of sojourn. A nonresident alien may bring firearms not otherwise prohibited by law into the State for a continuous period not to exceed ninety days; provided that the person meets the registration requirement of this section and the person possesses:

- (1) A valid Hawaii hunting license procured under chapter 183D, part II, or a commercial or private shooting preserve permit issued pursuant to section 183D-34;
- (2) A written document indicating the person has been invited to the State to shoot on private land; or

(3) Written notification from a firing range or target shooting business indicating that the person will actually engage in target shooting. The nonresident alien shall be limited to a nontransferable registration of ~~not~~ no more than ten firearms for the purpose of the above activities.

Every person registering a firearm under this subsection shall be fingerprinted and photographed by the police department of the county of registration; provided that this requirement shall be waived where fingerprints and photographs are already on file with the police department. The police department shall perform an inquiry on the person by using the International Justice and Public Safety Network, including the United States Immigration and Customs Enforcement query, the National Crime Information Center, and the National Instant Criminal Background Check System, pursuant to section 846-2.7 before any determination to register a firearm is made. Any person attempting to register a firearm, a firearm receiver, or the parts used to assemble a firearm, and who is found to be disqualified from ownership, possession, or control of firearms or ammunition under section 134-7, shall surrender or dispose of all firearms and ammunition pursuant to section 134-7.3.

(b) Every person who acquires a firearm pursuant to section 134-2 shall register the firearm in the manner prescribed by this section within five days of acquisition. If the firearm is acquired from a person who is not a dealer licensed under section 134-31 or a dealer licensed by the United States Department of Justice, the firearm shall be physically inspected by the chief of police of the appropriate county or designee at the time of registration. The registration of all firearms shall be on forms prescribed by the attorney general, which shall be uniform throughout the State, and shall include the following information: name of the manufacturer and importer; model; type of action; caliber or gauge; serial number; and source from which receipt was obtained, including the name and address of the prior registrant. If the firearm has been assembled from separate parts and an unfinished firearm receiver, the entity that registered the firearm receiver shall be recorded in the space provided for the name of the manufacturer and importer, and the phrase “assembled from parts” shall be recorded in the space provided for model. If the firearm has been assembled from parts created using a three-dimensional printer, the entity that registered the firearm receiver shall be recorded in the space provided for the name of the manufacturer and importer, and the phrase “3-D printer” shall be recorded in the space provided for model. If the firearm has no serial number, the registration number shall be entered in the space provided for the serial number, and the registration number shall be engraved upon the receiver portion of the firearm before registration. On firearms assembled from parts created using a three-dimensional printer, the ~~serial~~ registration number shall be engraved on stainless steel ~~and~~, permanently embedded to the firearm receiver during fabrication or construction~~[-]~~, and visible when the firearm is assembled. Firearms and firearm receivers with engraved or embedded registration numbers, even if done by a dealer licensed under section 134-31 or a dealer licensed by the United States Department of Justice, shall be physically inspected by the chief of police of the appropriate county or designee at the time of registration. All registration data that would identify the individual registering the firearm by name or address shall be confidential and shall not be disclosed to anyone, except as may be required:

- (1) For processing the registration;
- (2) For database management by the Hawaii criminal justice data center;
- (3) By a law enforcement agency for the lawful performance of its duties; or
- (4) By order of a court.

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(c) Dealers licensed under section 134-31 or dealers licensed by the United States Department of Justice shall register firearms pursuant to this section on registration forms prescribed by the attorney general and shall not be required to have the firearms physically inspected by the chief of police at the time of registration~~[-], except as provided in subsection (b).~~ An authorized dealer, as provided in section 134-31, or a dealer licensed by the United States Department of Justice, who brings, assembles, or causes to be brought into the State by any other means, separate parts and an unfinished firearm receiver that when assembled create a firearm, or parts created by a three-dimensional printer that when assembled create a firearm, shall register the unfinished firearm receiver and receive a serial number before the assembly of the firearm or the sale or transfer of unassembled firearm parts or a receiver to a third party in accordance with subsection (b). Any sale or transfer of unfinished firearm receivers by an authorized dealer to a third party shall be conducted as if they were fully assembled firearms with a serial number engraved on the firearm receiver and in accordance with the firearms permitting process in section 134-2. ~~[All other firearms and firearm receivers registered under this section shall be physically inspected by the respective county chief of police or the chief's representative at the time of registration.]~~”

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that on June 30, 2025, section 2 of this Act shall be repealed and section 134-3, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Approved June 3, 2022.)