

SENATE BILL REPORT

SB 5444

As Reported by Senate Committee On:
Law & Justice, February 1, 2018

Title: An act relating to enhanced background checks and licensure for assault weapons and large capacity magazines.

Brief Description: Concerning enhanced background checks and licensure for assault weapons and large capacity magazines. [**Revised for 1st Substitute:** Aligning the sale and purchase requirements for assault weapons with the sale and purchase requirements for handguns and pistols.]

Sponsors: Senators Frockt, Wellman, Kuderer, Chase, Darneille, Ranker, Pedersen, Hunt, Liias and Saldaña; by request of Attorney General.

Brief History:

Committee Activity: Law & Justice: 1/15/18, 2/01/18 [DPS-WM, DNP].

Brief Summary of First Substitute Bill

1. Defines assault weapon.
2. Aligns the requirements for the sale or transfer of an assault weapon with the requirements for the sale or transfer of a handgun.
 - a. Prohibits the sale or transfer of an assault weapon unless both a federal and a state background check have been completed through law enforcement.
 - b. Prohibits a person under the age of twenty-one from purchasing an assault weapon.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5444 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille and Frockt.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Angel, Assistant Ranking Member; Wilson.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Shani Bauer (786-7468)

Background: Both federal and state law regulate the possession and transfer of firearms. Firearms dealers (dealers) are required to have licenses in order to sell firearms. Under state law, a dealer includes anyone engaged in the business of selling firearms who has, or is required to have, a federal dealer's license. A person is not required to have a dealer's license if the person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of the person's personal collection of firearms. Dealers must comply with both federal and state background check requirements before transferring firearms to persons who do not have a federal firearms license (private persons).

Firearms Licensure. State law does not require firearms licensure for private persons except in the case of concealed pistols. It is generally unlawful for a person to carry a pistol concealed on their person, except in the person's abode or fixed place of business, unless the person has a valid concealed pistol license (CPL). Carrying a concealed pistol without having been issued a CPL is a misdemeanor offense. Failure to carry a CPL in one's immediate possession while carrying a concealed pistol is a civil infraction.

In order to obtain a CPL, a person must apply with the local law enforcement agency and undergo a fingerprint-based background check. A CPL must be issued if the applicant is not ineligible to possess a firearm and if the applicant meets other eligibility requirements. A CPL is valid for five years and may be renewed for successive five-year periods.

Federal Background Check Requirements. Under the federal Brady Handgun Violence Prevention Act, a dealer must, with few exceptions, conduct a background check for all firearm sales or transfers to private persons to determine whether the purchaser is prohibited from possessing a firearm. This background check is conducted through the National Instant Criminal Background Check System (NICS).

State Background Check Requirements. All firearms sales or transfers are subject to background checks unless specifically exempted by federal or state law, including sales and transfers through a dealer, at gun shows, online, and between private persons. A pistol purchaser must undergo a state background check in addition to the NICS check required by federal law. A state background check includes a check of the Washington State Patrol databases, the Department of Licensing (DOL) firearms database, and state and local mental health agencies.

A dealer may not deliver a firearm to a purchaser or transferee until the earlier of (1) the completion of all required background checks if the purchaser or transferee is not ineligible to possess a firearm; or (2) ten business days have passed since the dealer requested the background check, although a longer period may apply with respect to certain pistol transfers.

Pistol Transfers by Dealers: Specific requirements apply to pistol transfers by a dealer. A dealer may not deliver a pistol to a purchaser until one of the following occurs:

- the purchaser produces a valid CPL;

- the dealer is notified by the chief of police or sheriff that the purchaser is eligible to possess the firearm and the application is approved; or
- ten business days have elapsed since the application was received by the law enforcement agency, or up to 60 days if the person does not have a Washington driver's license or identification card or has not resided in the state for the previous 90 days.

The dealer must hold delivery of a pistol beyond these time periods if the applicant has an outstanding arrest warrant or the law enforcement agency has notified the dealer of an investigative hold.

An application for a pistol purchase must include identifying information of the applicant and a description of the pistol, including the make, model, and manufacturer's number. A signed application constitutes a waiver of confidentiality for purposes of release of information by mental health facilities and providers upon request of a law enforcement agency to determine the applicant's eligibility to possess firearms. A record of the pistol transfer must be retained by the dealer for six years, a copy of which must be submitted to DOL, which maintains this information in its firearms database.

Transfers Between Private Persons: Any sale or transfer of a firearm where neither party is a dealer must be completed through a dealer. The purchaser or transferee must complete and sign all federal, state, and local forms needed for processing the background check. The dealer must process the transaction by complying with all federal and state laws that would apply if the dealer were selling or transferring the firearm from the dealer's inventory.

Transfers of Rifles and Shotguns: Under federal law, a dealer must conduct a NICS check for any transfer of a rifle or shotgun to a private person. There is no requirement for a state background check by local law enforcement for these transfers. Non-residents may purchase rifles and shotguns in Washington, and Washington residents may purchase rifles and shotguns in another state, as long as the transaction complies with federal law and the purchaser is eligible to purchase or possess the firearm under the laws of Washington and the other state.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): Assault weapon is defined to mean a:

- semiautomatic rifle that has the capacity to accept a detachable magazine and has one or more listed features;
- semiautomatic pistol that has the capacity to accept a detachable magazine and has one or more listed features;
- semiautomatic pistol, or a semiautomatic, centerfire, or rimfire rifle with a fixed magazine, that has the capacity to accept more than ten rounds of ammunition;
- semiautomatic, centerfire, or rimfire rifle with an overall length of less than 30 inches;
- semiautomatic shotgun that has specified features, or a shotgun with a revolving cylinder; and
- conversion kit or parts from which an assault weapon can be assembled if in possession of the same person.

Assault weapon does not include antique firearms, a firearm that has been made permanently inoperable, or a firearm that is manually operated by bolt, pump, lever, or slide action.

A dealer may not deliver an assault weapon to a purchaser until one of the following occurs:

- the purchaser produces a valid concealed pistol license and the dealer has recorded the purchaser's information and completed the required background check;
- the dealer is notified by the chief of police or sheriff that the purchaser is eligible to possess the firearm and the application is approved; or
- ten business days have elapsed since the application was received by the law enforcement agency, or up to 60 days if the person does not have a Washington driver's license or identification card or has not resided in the state for the previous 90 days.

Other procedural requirements that apply to the sale or transfer of a pistol, also apply to the sale or transfer of an assault weapon:

- an application for purchase must include identifying information of the applicant and a description of the firearm;
- a signed application constitutes a waiver of confidentiality for purposes of release of information;
- a record of the firearm transfer must be retained by the dealer for six years, a copy of which must be submitted to DOL, which maintains this information in its firearms database;
- any sale or transfer where neither party is a dealer must be completed through a dealer;
- a person who acquired the firearm upon the death of the former owner must transfer possession or notify DOL that the person intends to retain possession of the assault weapon within 60 days; and
- a person between 18 and 21 years of age may only possess the firearm on private property.
- a person under 21 years of age may not purchase an assault weapon.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- prohibits the sale or transfer of an assault weapon to a person under twenty-one years of age and prohibits a person under the age of twenty-one from purchasing an assault weapon;
- restores "caliber" as information that must be provided on an application to purchase a pistol or assault weapon; and
- amends the title.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: The Mukilteo shooter was a 19-year old man who went to Cabelas and purchased an assault rifle and a large capacity magazine the same day. He was able to walk into the house party and empty his magazine. It only took 35 seconds to end the life of three children. This gun is designed to inflict the most carnage possible in a short amount of time and should not have been that easy to acquire.

The events of October 1 of this year in Las Vegas were horrifying. The killer had an AR-15 outfitted with a bumper slide modification, also known as a trigger modification. Without the modification, this rifle can shoot approximately 45 rounds per minute. According to audio recordings from the Las Vegas shooting, the shooter was able to increase his rate of fire to nine rounds per second. A 30-round magazine was emptied in just three seconds. You don't have to be a good marksman to kill 58 people with this gun. It should not be this easy to obtain these guns and a bumper slide stock should not be available.

Concert goers from the Las Vegas shooting described watching others get shot and bullets whizzing by their heads. Some were separated from loved ones. Others tried to help victims but were not able to save them. It is hard to feel safe after a tragedy such as this has occurred or to comprehend how the country has allowed this to happen. Private weapons such as this should not be accessible. Passage of PSSB 5444, SB 5992, and SB 6049 will help move us to a safer world where mass shootings do not occur.

Stricter regulations for background checks are needed before a person should be able to purchase an assault weapon. It is currently easier to purchase an assault rifle than it is to purchase a handgun. It is common sense to institute greater regulation given the amount of carnage that can be accomplished with an assault weapon. Mentally unstable individuals must not have access to firearms. These regulations are for their protection as well.

Hunters are required to take a hunter safety course and we are all better for it. Any person can purchase an assault weapon without knowing how to load it, store it, or shoot it. An enhanced background check process should be instituted for assault weapons.

CON: Semiautomatic firearms are some of the most commonly owned weapons for many lawful purposes. As defined in this bill, assault weapons are only used in 1 to 2 percent of violent crimes. According to WASPC data, rifles of any kind are only used in 3 percent of violent crime.

The term assault weapon is not an exact definition. As used in this bill, the definition is overly broad. The accessories of a rifle can be changed out to constitute an assault weapon. Further, there are many lawful purposes for an assault weapon. An assault weapon is more effective in helping a homeowner defend themselves than other types of firearms.

The definition of assault weapon is politically charged and far too broad. It takes ordinary firearms and redefines them as something they are not. Assault weapons are commonly understood to be fully automatic and are currently prohibited. The definition describes many

rifle features that have been owned by the public for 50 years. This bill will ban sales to law abiding citizens. Further, it gives the scandal ridden DOL the authority to add to its database when they have little regard for the privacy of private residents.

Washington could be more proactive other than just banning equipment and magazines, like providing more education and awareness to schools. Children should learn that a firearm is a tool and to respect people and respect life. The background check system is flawed and data does not always get into the system accurately. Washington State does not recognize protection order from Indian country. There are better avenues the state can take to protect citizens while still honoring firearm possession rights.

The state should start addressing mental health issues and making mental health treatment more accessible to the general public rather than focusing on firearm laws.

This bill goes against a woman's right to own a firearm for protection. Women are the fastest growing gun owning segment and the AR-15 is a popular firearm for women because of the size and ease of shooting. It gives a woman a fighting chance when seconds count.

Persons Testifying: PRO: Senator David Frockt, Prime Sponsor; Adam Cornell, Snohomish County Prosecuting Attorney's Office; Brian Walters, citizen; Ann-Marie Parson, citizen; Beatrice Seaward, citizen; Christina Brinch, citizen; Zachary Elmore, citizen; Kelly Bernado, Alliance For Gun Responsibility; Kimi Nolte, citizen; Rory Graves, Board Member, Alliance for Gun Responsibility; Zach Elmore, citizen; Christina Brinch, Alliance for Gun Responsibility; Kimberly Nolte, citizen; Michael Bell, citizen; Bob Ferguson, Attorney General; Matt Thomas, Assistant Attorney General; Emily Cantrell, citizen; Kyle Helms, citizen.

CON: David Westhaver, citizen; Mark Meister, citizen; Jane Milhans, citizen; John Calhoun, citizen; Kelly Birr, citizen; Larry Hamilton, citizen; Brett Bass, Bellevue Gun Club; Keely Hopkins, NRA; Phil Watson, Firearms Policy Coalition; Shawn Yanity, Chairman, Stillaguamish Tribe of Indians; Phil Shave, Washington Arms Collectors; Alan Gottlieb, Citizens Committee for the Right to Keep and Bear Arms; Bill Burris, citizen.

Persons Signed In To Testify But Not Testifying: PRO: Courtney Weaver, citizen; Alicia Johnston, citizen; Cheryl Stumbo, citizen; Zoe Moore, citizen; Randy Hilfman, citizen; Maureen McGregor, citizen; Jeanne Koenings, citizen; Margaret Knudson, citizen; Thomas Boyer, citizen; Ian Taylor, Moms Demand Action for Gun Sense in America, Washington Chapter Co-Lead; Evie Bellew, citizen; Michelle Alten-Kaehler, citizen; Tim Moses, citizen; Carol Dickinson, citizen; Richard Frith, citizen.

CON: Michael Carpenter, citizen; Ira Moser, NRA, FNRL, WAC, RFGC, NWFF; Sherri Erickson, citizen; Stephen Erickson, citizen; Grey Wunderly, Gun Rights Coalition; Mike Silvers, citizen; Edward Coffey, citizen; Rowland Martin, citizen; Dale Jarrell, citizen; Kurtis Lawrence, citizen; Richard Ripley, citizen; Gerry Pinero, citizen; Anne Hamilton, citizen; Eric Stewart, citizen; Jason Constantino, citizen; Daniel Mitchell, Sporting Systems; Michael Settles, SGM, AUS; Selena Coppa, citizen; Mary Schorri, citizen; Anthony DiPangrazio, NRA; Brian Heil, citizen; Alfredo Gude, citizen; Ernest Rodriguez, citizen; Sabrina Gray, citizen; Kathryn Townsend, citizen; Joey Gibson, citizen; Brian Borgelt, citizen; Rolf Vitous,

citizen; Aaron Lyons, citizen; Mark Bestauros, citizen; Darrell Joque, NRA; Kristopher Kord, citizen; Don Baldwin, citizen; Randall Bragge, citizen; Robert Hanegraaff, citizen; Sharyn Hinchcliffe, Pink Pistols, National African American Gun Association; Bryan Wilson, citizen; Larry Clemons, citizen; Gerry Pinero, citizen; Kylee Wible, citizen; Dave LaCoste Sr., citizen; Connor Barclay, citizen.