

SENATE BILL REPORT

SHB 1739

As Passed Senate - Amended, April 16, 2019

Title: An act relating to firearms that are undetectable or untraceable.

Brief Description: Addressing undetectable and untraceable firearms.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Valdez, Dolan, Kilduff, Pollet, Bergquist, Frame, Jinkins, Kloba and Macri; by request of Attorney General).

Brief History: Passed House: 3/04/19, 57-39; 3/04/19, 55-41.

Committee Activity: Law & Justice: 3/26/19, 3/28/19 [DP, DNP].

Floor Activity:

Passed Senate - Amended: 4/16/19, 30-18.

Brief Summary of Bill (As Amended by Senate)

- Defines undetectable and untraceable firearms.
- Prohibits the manufacture, assembly, repair, purchase, sale, or possession of an undetectable or untraceable firearm or its parts.
- Creates a crime for aiding or facilitating in the manufacture or assembly of an undetectable or untraceable firearm by another person who is prohibited from possession of firearms.
- Authorizes the seizure of undetectable or untraceable firearms as contraband by law enforcement.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Holy.

Staff: Tim Ford (786-7423)

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.

Background: In Washington State, with limited exceptions, it is unlawful for any person to manufacture, assemble, repair, sell, purchase, or possess a machine gun, short-barreled shotgun, short-barreled rifle, or bump-fire stock. Those specified firearms are declared to be contraband and may be seized by law enforcement. It is also unlawful for a person, in the commission of a felony, to discharge or menace another person with a machine gun, or with a firearm containing a bump-fire stock.

Certain persons are prohibited from possessing firearms under federal and state law. Under state law, a person is prohibited from owning or possessing a firearm when they:

- have a felony conviction or finding of not guilty by reason of insanity;
- have a conviction or finding of not guilty by reason of insanity for certain domestic violence offenses;
- are subject to a qualifying protection order, no-contact order, or restraining order that meets certain criteria;
- have previously been committed for involuntary mental health treatment for 14 days or more, or after being found criminally insane or incompetent to stand trial;
- are free on bond or personal recognizance for a serious offense;
- are an offender under Department of Corrections supervision;
- are a non-citizen, unless the person has an alien firearms license;
- are under age eighteen—with exceptions, or with respect to possession of pistols, is
- are under age twenty-one—with exceptions; or
- have signed a voluntary waiver of firearm rights that has not been revoked.

Under the federal Undetectable Firearms Act of 1988, it is illegal to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm that is not detectable by walk-through metal detectors, or have any major components of firearms that do not generate an accurate image by airport detection machines. Federal law requires a firearm to possess at least 3.7 ounces of steel, but does not specify which component or components.

Modern 3D printing technology uses computer aided design files (CAD) to manufacture three dimensional objects with diverse materials, including polymers and ceramics. Defense Distributed is an organization that produces and distributes CAD files for the manufacture of firearms and related parts. In 2013, the U.S. State Department forced Defense Distributed to remove its CAD files for the production of firearms from its website. The State Department claimed distribution of the files violated the International Traffic in Arms Regulations. Defense Distributed filed a lawsuit against the State Department in 2015 alleging a violation of their first, second, and fifth amendment rights. In April 2018, both parties reached a tentative settlement to allow Defense Distributed to place downloadable CAD files for firearm printing on its website. Washington State and 19 other states filed a temporary restraining order to prevent the settlement, which Federal District Judge Lasnik granted. The case is pending.

Summary of Amended Bill: "Undetectable firearm" means any firearm that is not detectable as 3.7 ounces of 17-4 PH stainless steel by walk-through metal detectors or magnetometers commonly used at airports or any firearm where the barrel, the slide or cylinder, or the frame or receiver of the firearm would not generate an image that accurately depicts the shape of the part when examined by the types of x-ray machines commonly used at airports.

"Untraceable firearm" means any firearm manufactured after July 1, 2019, that is not an antique firearm and that cannot be traced by law enforcement by means of a serial number affixed to the firearm by a federally licensed manufacturer or importer.

Allowing, Facilitating, Aiding, or Abetting Manufacture or Assembly. It is unlawful for a person to knowingly or recklessly allow, facilitate, aid, or abet the manufacture or assembly of an undetectable or untraceable firearm by a person who is ineligible to possess a firearm under state or federal law, or who has signed an unrevoked voluntarily waiver of firearm rights. Failure to conduct a background check is prima facie evidence of recklessness.

A violation is a misdemeanor offense; a second or subsequent violation is a class C felony ranked at seriousness level III under the Sentencing Reform Act (SRA). A person is guilty of a separate offense for each and every undetectable firearm or untraceable firearm.

Manufacturing, Owning, Buying, Selling, Loaning, Furnishing, Transporting, or Possessing. With some exceptions, it is unlawful for a person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession or control, any undetectable firearm or any part designed and intended solely and exclusively for use in an undetectable firearm; or assemble or repair an undetectable firearm. A violation is a class C felony ranked at seriousness level III under the SRA. Undetectable firearms that are illegally held or illegally possessed are contraband subject to immediate seizure by law enforcement.

It is unlawful for a person to manufacture an untraceable firearm with the intent to sell it. A violation is a class C felony ranked at seriousness level III under the SRA.

Separate subsections are created for each offense to allow tracking each offense separately in state databases.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on July 1, 2019.

Staff Summary of Public Testimony: PRO: This is about ensuring that our citizens of Washington feel safe. This growing technology has not been addressed. These 3D weapons are designed to escape detection. This bill will close a dangerous loophole. We regulate technology all the time such as drones and other emerging technologies. We need to prohibit persons from manufacturing untraceable firearms. Ghost guns are real and a threat. These guns makes it harder to investigate crimes. No-one needs an untraceable firearm.

CON: Federal law says you do not have a gun without a serial number. These 3D guns do not work because the plastic can not contain the pressure. There is no such thing as an assault weapon. If someone wants to manufacture a weapon there is nothing in the bill that allows the manufacturer to make the gun traceable and compliant with federal regulations. Sometimes components need to be replaced because the wear down. If I make a replacement

part for my gun the bill would make me a criminal. This bill makes criminals of law abiding citizens.

Persons Testifying: PRO: Representative Javier Valdez, Prime Sponsor; Bharat Shyam, citizen; Pat Griffith, League of Women Voters; Matt Vadnal, citizen; Tony Wilson, citizen; July Simpson, Attorney General's Office.

CON: Mike Silvers, citizen; Luis Berbesi, citizen; David Schirle, citizen.

Persons Signed In To Testify But Not Testifying: No one.