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## Civil Rights & Judiciary Committee

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### ESSB 5078

**Brief Description:** Establishing firearms-related safety measures to increase public safety by prohibiting the manufacture, importation, distribution, selling, and offering for sale of large capacity magazines, and by providing limited exemptions applicable to licensed firearms manufacturers and dealers for purposes of sale to armed forces branches and law enforcement agencies for purposes of sale or transfer outside the state.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Liias, Kuderer, Darneille, Hunt, Nguyen, Pedersen, Wilson, C. and Lovelett; by request of Attorney General).

#### Brief Summary of Engrossed Substitute Bill

- Prohibits the manufacture, importation, distribution, and sale of large capacity magazines, subject to exemptions.
- Establishes that violations of these restrictions are a gross misdemeanor.
- Establishes that distribution or sale of large capacity magazines online, or facilitating the same, is actionable under the Washington Consumer Protection Act.

**Hearing Date:** 2/16/22

**Staff:** John Burzynski (786-7133).

#### **Background:**

##### Firearms and Magazines.

A firearm magazine is a device that can hold several rounds of ammunition that can be fed into a firearm. Magazines can take multiple forms and may be fixed or removable. Washington regulates firearms and other weapons but does not generally restrict ammunition or magazines,

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except that: (1) firearm dealers must obtain a license to sell ammunition; and (2) certain offenders under the supervision of the Department of Corrections may not possess ammunition. Federal law previously restricted the transfer and possession of large capacity ammunition feeding devices, including magazines, with a capacity of more than 10 rounds, subject to various exceptions and a sunset provision. These federal restrictions expired in 2004. Nine other states and the District of Columbia have enacted laws imposing various restrictions on large capacity magazines.

#### The Right to Keep and Bear Arms.

The right to keep and bear arms is protected by the Second Amendment to the United States Constitution and Article I, section 24 of the Washington Constitution. Federal and Washington case law has established that while both constitutional provisions protect an individual right, this right is not unlimited. The United States Court of Appeals for the Ninth Circuit recently upheld California's prohibition on possession of large capacity magazines against a Second Amendment challenge. *Duncan v. Bonta* (9th Cir. 2021). The Court reasoned that California's prohibition imposed a minimal burden on Second Amendment rights because it did not outlaw any weapon, but rather limited only the size of the magazine that could be used with a firearm. Based on the law's limited burden, the Court applied intermediate scrutiny. The Court concluded California's prohibition on large capacity magazines was a reasonable fit for the state's compelling goal of reducing gun violence and upheld the challenged law. In addition to the Ninth Circuit, the United States courts of appeals for the first, second, third, fourth, seventh, and District of Columbia circuits have also upheld various restrictions on large capacity magazines.

#### The Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition, and unfair or deceptive practices in trade or commerce. If a person is injured by a violation of the CPA, the person may bring a civil action to enjoin further violations and recover actual damages, costs, and attorney's fees. The Attorney General may also bring an action in the name of the state on behalf of persons residing in the state, against any person to enjoin violations of the CPA and obtain restitution. The Attorney General may also seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA. To establish a CPA claim, a private plaintiff must prove: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) affecting the public interest; (4) injury to a person's business or property; and (5) causation. If the state brings a CPA claim, it must prove: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; and (3) public interest impact. Unlike a private plaintiff under the CPA, the state is not required to prove causation or injury.

### **Summary of Bill:**

#### Restrictions on Large Capacity Magazines.

No person in Washington may manufacture, import, distribute, sell, or offer for sale any large capacity magazine. "Large capacity magazine" is defined as an ammunition feeding device with the capacity to accept more than 10 rounds of ammunition, or any conversion kit, part, or combination of parts, from which such a device can be assembled if those parts are in possession

of or under the control of the same person, but shall not be construed to include any of the following: (1) an ammunition feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds of ammunition; (2) a 22 caliber tube ammunition feeding device; or (3) a tubular magazine that is contained in a lever-action firearm.

The prohibition on large capacity magazines does not apply to:

- the manufacture, importation, distribution, offer for sale, or sale of a large capacity magazine by a licensed firearms manufacturer for the purposes of sale to any branch of the armed forces of the United States or the State of Washington, or to a law enforcement agency in this state for use by that agency or its employees for law enforcement purposes;
- the importation, distribution, offer for sale, or sale of a large capacity magazine by a dealer that is properly licensed under federal and state law for the purpose of sale to any branch of the armed forces of the United States or the State of Washington, or to a law enforcement agency in this state for use by that agency or its employees for law enforcement purposes; and
- the distribution, offer for sale, or sale of a large capacity magazine to or by a dealer that is properly licensed under federal and state law where the dealer acquires the large capacity magazine from a person legally authorized to possess or transfer the large capacity magazine for the purpose of selling or transferring the large capacity magazine to a person who does not reside in this state.

A violation of this prohibition constitutes a gross misdemeanor, punishable by imprisonment for up to 364 days and a fine of up to \$5,000.

#### Consumer Protection Act.

Distributing, selling, offering for sale, or facilitating the sale, distribution, or transfer of a large capacity magazine online is deemed to be an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce for purposes of the Washington Consumer Protection Act.

#### Additional Defined Terms.

"Manufacture" means, with respect to a firearm or large capacity magazine, the fabrication or construction of a firearm or large capacity magazine.

"Distribute" means to give out, provide, make available, or deliver a firearm or large capacity magazine to any person in this state, with or without consideration, whether the distributor is in-state or out-of-state. "Distribute" includes, but is not limited to, filling orders placed in this state, online or otherwise. "Distribute" also includes causing a firearm or large capacity magazine to be delivered in this state.

"Import" means to move, transport, or receive an item from a place outside the territorial limits of the State of Washington to a place inside the territorial limits of the State of Washington.

"Import" does not mean situations where an individual possesses a large capacity magazine when departing from, and returning to, Washington state, so long as the individual is returning to

Washington in possession of the same large capacity magazine the individual transported out of state.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on July 1, 2022.