

HOUSE BILL REPORT

ESSB 5078

As Passed House:

March 4, 2022

Title: An act relating to establishing firearms-related safety measures to increase public safety by prohibiting the manufacture, possession, distribution, importation, selling, offering for sale, purchasing, or transfer of large capacity magazines, by allowing continued possession of large capacity magazines limited to possession prior to, and inheritance on or after, the effective date of this act, subject to certain restrictions on the ability to sell or transfer such large capacity magazines and permitting their possession only on the owner's property or while engaged in lawful outdoor recreational activities or use at a licensed shooting range, or when transporting the large capacity magazine to or from these locations, and by providing limited exemptions applicable to certain government officers, agents, employees, or contractors, law enforcement and corrections officers and military members, licensed firearms manufacturers, dealers, and gunsmiths, and persons engaged in sport shooting or permanently relinquishing a large capacity magazine to law enforcement.

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 History:

Committee Activity:

Civil Rights & Judiciary: 2/16/22, 2/18/22 [DP].

Floor Activity:

Passed House: 3/4/22, 55-42.

Brief Summary of Engrossed Substitute Bill

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

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

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Hansen, Chair; Simmons, Vice Chair; Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Do not pass. Signed by 6 members: Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Klippert and Ybarra.

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, 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 Second Amendment to the United States Constitution protects the right to keep and bear arms. Article I, section 24, of the Washington Constitution protects the right to bear arms in defense of one's self or the state. 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, 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.

Staff Summary of Public Testimony:

(In support) Large capacity magazines increase the lethality of firearms they are attached to by allowing more rounds to be fired faster. High-capacity magazines allow shooters to continue an attack without pausing to reload. If an attacker must reload, those seconds can make a difference in allowing people to escape and survive. Weapons equipped with high-capacity magazines have been used to carry out mass shootings in Washington and other states. Existing laws make more shootings inevitable.

When large capacity magazines are used in shootings, they produce twice as many fatalities and 14 times more injuries. States without restrictions on large capacity magazines have twice the rate of mass fatality shootings and three times the number of shooting casualties. Whether a state allows high-capacity magazines is the best predictor of mass shooting rates in the state. In the past half century, large capacity magazines have been used in three-quarters of massacres with 10 or more deaths and 100 percent of massacres with 20 or more deaths. More than twice as many are killed or injured when a shooter uses a large capacity magazine compared against a shooter using a smaller capacity magazine.

Gun violence is a public health crisis that requires action. Victims of gun violence are disproportionately African American. High-capacity magazines are weapons for the military and police and should have no place in civilian life. This measure will save lives in Washington.

This bill will be effective. Retailers and licensed dealers will comply, reducing access to large capacity magazines. This bill is constitutional. Seven federal courts of appeals have found restrictions on large capacity magazines to be consistent with the Second Amendment. Restrictions on large capacity magazines are common. Ninety-three million people live in the nine other states that already restrict magazines that can hold more than 10 rounds. Large capacity magazines are unnecessary. On average, only 2.2 shots are fired in self-defense shootings.

(Opposed) This bill disadvantages minorities, and is racist, transphobic, xenophobic, homophobic, and anti-feminist. Washington has a history of minority groups being targeted. This bill will diminish the ability of minority communities and individuals to defend themselves without help from the state and erode trust. Additionally, people with disabilities and smaller bodies who cannot or will not use higher caliber rounds will be negatively affected by this law. Washington has an increasing minority population and increasing number of minorities purchasing firearms. While the majority white population has enjoyed the right to purchase large capacity magazines for generations, this bill would deny the same right to minorities.

This bill undermines safety. The majority of violent crimes are committed by more than one assailant, and the average number of home invaders is two to five. This bill will disadvantage defenders during a criminal attack. The increasing violence in communities and inability of police to respond necessitates firearms to protect lives. A 10-round magazine is insufficient for many women to defend themselves against a larger, taller, and

heavier man. This bill implicates both women's issues and public safety issues. Minorities must protect themselves from harm. If this bill becomes law, an increase in hate crimes will result. Firearms are used defensively three million times each year.

This bill would be ineffective. The statistics used by the proponents of this bill have been manipulated for political gain. States with magazine restrictions continue to experience violence and mass shootings. In Russia, a shotgun was used to kill 19 people. With practice, a revolver can be reloaded faster or as fast as a magazine can be changed. Skill, not magazine capacity, determines the amount of damage that can be inflicted. There is no evidence this law will reduce violence in Washington. This bill will not stop criminals from obtaining high-capacity magazines. Firearms with detachable magazines that can hold more than 10 rounds are ubiquitous throughout the United States and Washington. Law enforcement CEOs do not support these types of laws. The way to resolve gun violence is to enforce existing laws and make it painful to commit gun crimes.

This bill is unconstitutional. This bill infringes on the right of self-defense. Similar restrictions were found to be unconstitutional by two courts in California before being reversed by the Ninth Circuit Court of Appeals in a case that is now headed to the United States Supreme Court.

This bill will have unintended consequences. This bill's definition of "distribute" would prevent loans and gifts, which goes beyond the Legislature's intent. The bill will also devastate small business dealers, who will have insufficient time to sell their inventory before the law takes effect causing in at least one instance costs of approximately \$135,000.

Persons Testifying: (In support) Senator Marko Liias, prime sponsor; Kristin Beneski, Washington State Attorney General's Office; Lisa Herbold; Seattle City Council; Ann-Marie Parsons; Robert Schentrup; Fred Rivara; Adam Cornell; Ami Strahan; and Margaret Heldring.

(Opposed) Don Quang Nguyen; Lisa Chang; Siamak Roshaninosratabad; Ozzie Knezovich; Andrew Wise; Dana Morgan; Lawrence Keane, National Shooting Sports Foundation; Aoibheann Cline, National Rifle Association; and Daniel Mitchell.

Persons Signed In To Testify But Not Testifying: More than 20 persons signed in. Please see committee staff for information.