

HOUSE BILL REPORT

ESHB 1705

As Passed House:
February 10, 2022

Title: An act relating to limiting ghost guns, including untraceable firearms and untraceable unfinished frames and receivers that can be used to manufacture or assemble untraceable firearms, with exceptions for licensed federal firearm manufacturers, dealers, and importers, and firearms that have been rendered permanently inoperable, are antiques, or were manufactured before 1968.

Brief Description: Concerning ghost guns.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Berry, Valdez, Ryu, Fitzgibbon, Berg, Bateman, Duerr, Walen, Callan, Davis, Taylor, Macri, Peterson, Ramel, Ramos, Santos, Senn, Simmons, Slatter, Bergquist, Tharinger, Pollet, Frame, Harris-Talley, Hackney and Kloba).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/12/22, 1/21/22 [DPS].

Floor Activity:

Passed House: 2/10/22, 57-39.

Brief Summary of Engrossed Substitute Bill

- Restricts the manufacture, assembly, sale, transfer, purchase, possession, transport, and receipt of untraceable firearms.
- Restricts the sale, transfer, purchase, possession, transport, and receipt of unfinished frames and receivers.
- Establishes standards for marking untraceable firearms and unfinished frames and receivers with serial numbers.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill 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:

Washington law defines "untraceable firearms" as 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.

Washington prohibits the manufacture of an untraceable firearm with intent to sell. A violation of this restriction is punishable as a class C felony.

Washington further prohibits knowingly or recklessly allowing, facilitating, aiding, or abetting the manufacture or assembly of an undetectable firearm or untraceable firearm by a person who: (1) is ineligible under state or federal law to possess a firearm; or (2) has signed a valid voluntary waiver of firearm rights that has not been revoked. Failure to conduct a background check is prima facie evidence of recklessness. A violation of this restriction is punishable as a gross misdemeanor for a first offense, or as a class C felony for a repeat offense.

Summary of Engrossed Substitute Bill:

Untraceable Firearms—General Limitations.

The definition of "untraceable firearm" is revised to mean 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 federal firearms manufacturer, federal firearms importer, or federal firearms dealer in compliance with all federal laws and regulations.

After June 30, 2022, manufacturing, causing to be manufactured, assembling, causing to be assembled, selling, offering to sell, transferring, or purchasing an untraceable firearm is prohibited.

After March 10, 2023, knowingly or recklessly possessing, transporting, or receiving an untraceable firearm is prohibited, with exceptions for law enforcement agencies and federally licensed firearms importers, manufacturers, and dealers.

The foregoing restrictions on selling, offering to sell, transferring, purchasing, possessing, transporting, or receiving untraceable firearms do not apply to firearms rendered permanently inoperable, or that are antiques, or were manufactured prior to 1968, or have been imprinted with a serial number by a federal firearms dealer or other federal licensee authorized to provide marking services.

A violation of these restrictions in the first instance is a civil infraction punishable by a monetary penalty of \$500. A second violation is punishable as a misdemeanor. A third or subsequent violation is punishable as a gross misdemeanor. Additionally, any violation of these restrictions with three or more untraceable firearms at a time is punishable as a gross misdemeanor.

Untraceable Firearms—Construction with Intent to Sell.

After June 30, 2022, the prohibition on manufacturing an untraceable firearm with intent to sell is expanded to also prohibit a person from causing to be manufactured, assembling, or causing to be assembled an untraceable firearm with intent to sell. Violations of this restriction are punishable as a class C felony.

Unfinished Frames and Receivers.

A "frame or receiver" is defined as a part of a firearm that, when the complete firearm is assembled, is visible from the exterior and provides housing or a structure designed to hold or integrate one or more fire control components, even if pins or other attachments are required to connect the fire control components. Any such part identified with a serial number is presumed to be a frame or receiver, absent an official determination by the Bureau of Alcohol, Tobacco, Firearms, and Explosives or other reliable evidence to the contrary. "Fire control component" means a component necessary for the firearm to initiate, complete, or continue the firing sequence, including any of the following: hammer, bolt, bolt carrier, breechblock, cylinder, trigger mechanism, firing pin, striker, or slide rails.

An "unfinished frame or receiver" is defined as a frame or receiver that is partially complete, disassembled, or inoperable, that: (1) has reached a stage in manufacture where it may readily be completed, assembled, converted, or restored to a functional state; or (2) is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once finished or completed, including without limitation products marketed or sold to the public as an 80 percent frame or receiver or unfinished frame or receiver.

For purpose of this definition:

- "Readily" means a process that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speedy, or easy process. Factors relevant in making this determination include time, ease, expertise, equipment, availability, expense, scope, and feasibility.

- "Partially complete," as it modifies frame or receiver, means a forging, casting, printing, extrusion, machined body, or similar article that has reached a stage in manufacture where it is clearly identifiable as an unfinished component part of a firearm.

After June 30, 2022, selling, offering to sell, transferring, or purchasing an unfinished frame or receiver is prohibited, with exceptions for purchases by federally licensed firearms importers, manufacturers, or dealers.

After March 10, 2023, knowingly or recklessly possessing, transporting, or receiving an unfinished frame or receiver is prohibited, with exceptions for law enforcement agencies and federally licensed firearms importers, manufacturers, or dealers.

The restrictions applicable to unfinished frames and receivers do not apply to unfinished frames or receivers that have been imprinted with a serial number issued by a federally licensed firearms importer, manufacturer, or dealer.

A violation of these restrictions in the first instance is a civil infraction punishable by a monetary penalty of \$500. A second violation is punishable as a misdemeanor. A third or subsequent violation is punishable as a gross misdemeanor. Additionally, any violation of these restrictions with three or more unfinished frames or receivers at a time is punishable as a gross misdemeanor.

Marking Requirements.

Federal firearms dealers and other federal licensees authorized to provide marking services for firearms may imprint a firearm or unfinished frame or receiver with a serial number. The number must consist of: (1) the federal licensee's abbreviated federal firearms license number; and (2) a serial number, which may not duplicate any other serial number the federal licensee has placed on any other firearm or unfinished frame or receiver. Federal licensees providing serializations must maintain records in accordance with federal record requirements for the sale of a firearm.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 9, 2022.

Effective Date: This bill takes effect July 1, 2022, except for section 5(2), relating to possessing, transporting, or receiving an untraceable firearm, which takes effect March 11, 2023; and section 6(1), relating possessing, transporting, or receiving an unfinished frame or receiver, which takes effect March 11, 2023.

Staff Summary of Public Testimony:

(In support) Gun violence is a public health crisis. Between 2016 and 2020 law enforcement recovered nearly 24,000 ghost guns. Law enforcement report seeing increasing use of ghost guns in Washington and other states. Current law does not address homemade guns.

Untraceable homemade ghost guns are widely available and can be easily purchased online and assembled at home without any background check. Ghost guns, 80 percent receivers, and gun kits allow individuals to evade the background check process. Ghost guns leave no paper trail. Every gun sale should involve a background check, but ghost guns undermine the background check system.

Ghost guns can't be traced because they lack a serial number. They are designed to evade and delay criminal investigations and put communities at risk. Ghost guns are a favored tool of firearms traffickers and weapons-of-choice for domestic violence offenders. No one needs an untraceable firearm.

This bill will not burden hobbyists, who will still be able to obtain serialized parts to build firearms.

(Opposed) The United States has a long tradition of homemade firearms and gunsmiths have a constitutional right to privately manufacture their own firearms. This bill infringes on Second Amendment rights and the Washington Constitution.

This law is unnecessary. All firearms are already federally regulated, regardless of how they are manufactured. New laws will not deter criminals or stop them from obtaining guns but will burden hobbyists. This bill won't address trafficking and criminals. This bill is simply trying to micromanage citizens. There is no evidence individuals who could not pass background checks are making ghost guns. Moreover, manufacturing a firearm is not easy; it requires time, tools, and knowledge. Most firearms used in crimes are obtained through theft. The remedy to gun crimes is to aggressively pursue criminal misuse of guns. Existing laws should be enforced.

The bill's definition of "unfinished frame and receiver" is vague. It is not clear when a block of metal or plastic becomes an unfinished frame and receiver. This law lacks factors considered by federal law and any critical stage analysis. Additionally, the bill's regulation of assembly is overbroad. Despite stating an intent to be interpreted in a manner consistent with federal law, the text of the bill is broader than federal law.

The proposed law does not grandfather in existing guns and would require their serialization. Legal owners of firearm kits should not be criminalized.

Persons Testifying: (In support) Representative Liz Berry, prime sponsor; Kim Wyatt and David Martin, King County Prosecuting Attorney's Office; Jordan Ferguson, Spokane Police Department; David Pucino, Giffords Law Center; Kim Gatbunton; Cherie Rowe

Proctor, Grandmothers Against Gun Violence; Jay Ward; Nancy Dombrowski; and Gael Tarleton.

(Opposed) Daniel Mitchell; Troy Nichols, National Shooting Sports Foundation; Patrick Zunk, Washington Civil Rights Association; Aoibheann Cline, National Rifle Association; Chris Spieth; Todd Gowin; Ivan Chongarov; and Kyle Thannisch.

Persons Signed In To Testify But Not Testifying: Jeannie Shu; Jane Weiss; Ian Taylor; Charlene Kahn; Paula Barnes; Leanne Kennedy; Brad Blackburn; Tremayne Edwards; Maureen McGregor; Kristen Ellingboe; Nelago Nuunyango; Chelsey Wright; Sean Kent; Hazel Brown; Aaron Lyons, Black Rifle League; Michael Beardslee; Rex Terry; Isaam Akhtar; Jared Adams; and Briar Applebury.