

HOUSE BILL REPORT

SHB 1240

As Passed House:

March 8, 2023

Title: An act relating to establishing firearms-related safety measures to increase public safety by prohibiting the manufacture, importation, distribution, selling, and offering for sale of assault weapons, and by providing limited exemptions applicable to licensed firearm manufacturers and dealers for purposes of sale to armed forces branches and law enforcement agencies and for purposes of sale or transfer outside the state, and to inheritors.

Brief Description: Establishing firearms-related safety measures to increase public safety.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Peterson, Senn, Alvarado, Walen, Street, Springer, Simmons, Reeves, Reed, Ormsby, Kloba, Fitzgibbon, Duerr, Doglio, Berry, Bateman, Fey, Davis, Ramel, Bergquist, Fosse, Pollet, Lekanoff, Macri, Gregerson and Santos; by request of Office of the Governor, Attorney General).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/17/23, 1/27/23 [DPS].

Floor Activity:

Passed House: 3/8/23, 55-42.

Brief Summary of Substitute Bill

- Prohibits the manufacture, importation, distribution, sale, or offer for sale of any assault weapon, subject to various exceptions for licensed firearm manufacturers and dealers, and for individuals who inherit an assault weapon.
- Provides a violation of these restrictions constitutes a gross misdemeanor and is actionable under the Consumer Protection Act.

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.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hansen, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson and Walen.

Minority Report: Do not pass. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Cheney and Rude.

Staff: John Burzynski (786-7133).

Background:

Firearms Regulations.

Firearms and other weapons are regulated under Washington law. Among other restrictions, the state prohibits all persons from manufacturing, owning, buying, selling, loaning, furnishing, transporting, possessing, or controlling any machine gun, bump-fire stock, undetectable firearm, and certain other weapons, subject to various exceptions.

Washington does not specifically define and regulate a general class of weapons designated as assault weapons, but the state has established various restrictions on a group of weapons classified as semiautomatic assault rifles. State law defines a semiautomatic assault rifle as any rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge, but this definition excludes antique firearms, any firearm that has been made permanently inoperable, and any firearm that is manually operated by bolt, pump, lever, or slide action.

Restrictions on semiautomatic assault rifles include:

- No dealer may deliver a semiautomatic assault rifle to the purchaser until: (1) the purchaser provides proof they have completed a recognized firearm safety training program within the last five years; (2) the dealer is notified by the chief of police or sheriff that the purchaser is eligible to possess a firearm and the purchase is approved; and (3) 10 business days have elapsed since the purchase application or, in the case of a transfer, 10 business days have elapsed from the date a background check was initiated.
- The purchaser of a semiautomatic assault rifle must be personally known to the dealer or present clear evidence of his or her identity.
- Subject to various exceptions, a person under 21 years of age may not purchase a semiautomatic assault rifle, and no person may sell or transfer a semiautomatic assault rifle to a person under 21 years of age.

Federal law previously restricted certain semiautomatic assault weapons, 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 assault weapons.

The Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition, and unfair or deceptive acts or practices in trade or commerce. If a person is injured in their business or property by a violation of the CPA, the person may bring a civil action to enjoin further violations and recover actual damages, costs, and reasonable attorney's fees.

Whenever the Attorney General believes any person may have material or information relevant to an investigation into a violation of the CPA, the Attorney General may issue a civil investigative demand requiring the person to produce the materials, answer interrogatories, or testify. Additionally, the Attorney General may bring a legal action to enjoin violations of the CPA, obtain restitution, and seek civil penalties.

Summary of Substitute Bill:

The manufacture, importation, distribution, sale, or offer for sale of any assault weapon is prohibited.

The term "assault weapon" is defined to include various kinds of firearms, including:

- semiautomatic rifles with an overall length of less than 30 inches;
- semiautomatic centerfire rifles that have the capacity to accept a detachable magazine and have one or more additional features listed in the bill;
- semiautomatic centerfire rifles with a fixed magazine with the capacity to accept more than 10 rounds;
- semiautomatic pistols that have the capacity to accept a detachable magazine and have one or more additional features listed in the bill;
- semiautomatic shotguns that have one or more additional features listed in the bill;
- specific firearm models identified in the bill; and
- conversion kits and parts that can be used to assemble an assault weapon or convert a firearm into an assault weapon, if the parts are in the possession of or under the control of the same person.

The term "assault weapon" excludes antique firearms, firearms that have been made permanently inoperable, and firearms that are manually operated by bolt, pump, lever, or slide action.

The restrictions on assault weapons are subject to several exceptions:

- Licensed firearms manufacturers are authorized to manufacture, import, distribute, offer for sale, and sell assault weapons for the purpose of sale to the armed forces of the United States or Washington, or to any law enforcement agencies for law enforcement purposes, or to a person who does not reside in Washington.
- Licensed firearms dealers are authorized to import, distribute, offer for sale, and sell

assault weapons for the purpose of sale to the armed forces of the United States or Washington, or to law enforcement agencies in Washington for law enforcement purposes.

- Licensed firearms dealers are authorized to distribute, offer for sale, and sell assault weapons that were acquired from an individual legally authorized to possess or transfer the weapon, for the purpose of selling or transferring the weapon to a person who does not reside in Washington.
- Any person may acquire possession of an assault weapon by operation of law upon the death of the weapon's former owner, if that former owner was in legal possession of the weapon and the person who acquires possession can establish such provenance.

A violation of these restrictions is classified as a gross misdemeanor. Additionally, a violation is classified as a matter vitally affecting the public interest, not reasonable in relation to the development and preservation of business, and an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the Consumer Protection Act.

If the Attorney General issues a civil investigative demand regarding a potential violation of these restrictions, the recipient of the demand may file in Superior Court a petition to extend the time to respond, or modify or set aside the demand for good cause. Additionally, the Attorney General is prohibited from sharing any materials or information obtained through a civil investigative demand with any law enforcement agency conducting a criminal investigation, unless required to do so pursuant to a search warrant.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) While all firearms can be used to create death and tragedy, assault weapons are used in most mass shootings and are the weapon-of-choice for mass shooters. Assault weapons are 11 times more likely to be used in mass shootings and seven times more likely to be used to kill a law enforcement officer. When assault weapons are used in shootings, the rate of fatalities is doubled. Assault weapons are now used in twice as many mass shootings as in prior years, and mass shootings like Sandy Hook, Uvalde, Las Vegas, and Buffalo are becoming increasingly common. While the federal ban on assault weapons was in effect, mass shooting fatalities were 70 percent less likely to occur.

Assault weapons are designed for the sole purpose of maximizing killing, fire faster and hit more targets, kill quickly and efficiently, are created for the military, and are equipped with military features that go beyond sporting firearms. Assault weapons can kill and injure

hundreds in a matter of minutes. Military weapons do not belong on the streets, and assault weapons do not belong in communities or schools.

This bill restricts sales; it will not make anyone less able to defend themselves or turn law-abiding citizens into criminals. The bill will reduce access to deadly weapons used in mass shootings, limit the continued purchase and expansion of use of assault weapons in Washington, and stem the tide of gun violence. No one law will stop all gun violence, but this bill will help. Nine other states restrict assault weapons; Washington should be the tenth state to do so.

The Second Amendment says nothing about assault weapons and the founders had no way of knowing what kind of weapons would develop or how people would use them. The Second Amendment was not intended to grant a private right of self-defense. Rights must be balanced with responsibilities.

This bill is on sound constitutional footing and similar laws have been upheld across the country. The Supreme Court has reiterated that firearm rights are not unlimited and the Second Amendment does not protect a right to keep and bear any weapon whatsoever. Regulations of weapons of war to protect public safety are consistent with our nation's history and tradition of firearm regulation. The Supreme Court has expressly stated that fully automatic weapons are not protected by the Second Amendment, and this bill is consistent with that line of precedent.

(Opposed) This bill will not address the misuse of firearms. The vast majority of criminals that use firearms are not lawfully in possession. The Department of Justice reports that 88.8 percent of gun violence is caused by people possessing firearms illegally. Ninety-eight percent of gun deaths are caused by handguns, which this bill does not address. The federal Center for Disease Control found the federal ban on assault weapons had no measurable impact on gun violence. "Assault weapon" is a manufactured term and fear mongering. This new law is a feel-good bill, will not help, and will have no effect on gun violence, but will simply penalize law-abiding citizens. Since last session's ban on high-capacity magazines, the state has seen an increase in gun violence.

Addressing the real problem requires a discussion of how firearm violations are pled to lower charges or the charges are dropped. The solution is to lock in tougher sentencing guidelines, stop being soft on crime, hold criminals accountable, and give more support to law enforcement so they can go after dangers before they occur.

Women are the fastest growing group of gun owners and prefer modern sporting rifles, including the AR 15, because they can adjust the stock to fit their size, there is little to no recoil making the weapon safer to operate, and self-defense ammunition that is less likely to penetrate structural walls is available. Modern sporting rifles are the weapon of choice for women and some people with disabilities. This bill takes away the best defensive weapon for women and discriminates against women.

This bill bans the most commonly owned and lawfully possessed firearms, including some pistols and shotguns. The weapons targeted by this bill are the most popular self-defense weapons in America, contrary to the Legislature's finding that they are not suitable for self-defense. It is beyond dispute that a statistically significant number of citizens possess semiautomatic rifles for self-defense.

This bill is unconstitutional under the Supreme Court's new history, text, and tradition test. Where constitutional rights are concerned, no law can abrogate them. Passing this legislation will only result in steep legal bills for the state and taxpayers while failing to address criminal misuse of firearms. Similar bans have not been upheld under the *Bruen* test and there are 20 active court cases challenging similar bans across the country. This law will be found unconstitutional, but it could take the courts years to resolve.

The firearm industry provides substantial economic activity. This bill will result in layoffs and the closure of a firearms manufacturing facility in Lakewood, which is the largest private employer in Lakewood and has over 600 employees. Existing contracts will be placed in jeopardy if this bill is passed.

Persons Testifying: (In support) Representative Strom Peterson, prime sponsor; Ann-Marie Parsons; Robert Schentrup; Barbara Serrano, Office of the Governor; Kristin Beneski, Attorney General's Office; Ami Strahan; Mike Van Dyke; and Emily Cantrell.

(Opposed) Julie Barrett, Conservative Ladies of Washington; Aoibheann Cline, National Rifle Association; Troy Nichols, National Shooting Sports Foundation; Jane Milhans; Robin Ball, Sharpshooting Indoor Range; Janie Vigil, Aero Precision; and Dan Mitchell, Washington Civil Rights Association.

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