

LFC Requester:	Ellen Rabin
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**AGENCY BILL ANALYSIS
2023 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date January 19, 2023
Bill No: HB101

Sponsor: Andrea Romero and Linda Serrato
Short Title: Large-Capacity Magazines & Assault Weapons
Agency Name and Code: 305–Office of the Attorney General
Number: _____
Person Writing: Andrew Coffing
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General Opinion nor an Attorney General Advisory Letter. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the Office of the Attorney General.

BILL SUMMARY

Synopsis: HB101 proposes to make it illegal to possess, manufacture, purchase, sell, or transfer any “large-capacity ammunition feeding device” or “assault weapon”. It defines “large-capacity ammunition feeding device” as, in essence, any magazine or similar device that can accept more than ten rounds of ammunition. It provides six enumerated definitions for “assault weapon”:

- (a) semi-automatic rifle that has the capacity to accept a detachable magazine and has one or more of the following: 1) a pistol grip or thumbhole stock; 2) any feature capable of functioning as a protruding grip that can be held by the non-trigger hand; 3) a folding or telescoping stock; or 4) a shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;
- (b) semi-automatic pistol or any semiautomatic, centerfire or rimfire rifle with a fixed magazine that has the capacity to accept more than ten rounds of ammunition;
- (c) semi-automatic pistol that has the capacity to accept a detachable magazine and has one or more of the following: 1) any feature capable of functioning as a protruding grip that can be held by the non-trigger hand; 2) a folding, telescoping or thumbhole stock; 3) a shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the nontrigger hand without being burned, but excluding a slide that encloses the barrel; or 4) the capacity to accept a detachable magazine at any location outside of the pistol grip;
- (d) semi-automatic shotgun that has one or more of the following: 1) a pistol grip or thumbhole stock; 2) any feature capable of functioning as a protruding grip that can be held by the non-trigger hand; 3) a folding or telescoping stock; 4) a fixed magazine capacity in excess of five rounds; or 5) an ability to accept a detachable magazine;
- (e) shotgun with a revolving cylinder; or
- (f) conversion kit, part or combination of parts from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person.

HB101 would penalize the violation of its provisions as a fourth degree felony.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

The bill's prohibition on the possession of large-capacity ammunition feeding devices and assault weapons may face a challenge based on the Second Amendment of the United States Constitution. Previously, the Federal Assault Weapons Ban of 1994 imposed a federal prohibition against large capacity magazines. The ban, which was never ruled unconstitutional, including its ban on magazines capable of holding more than ten rounds of ammunition, expired in September 2004 through a sunset provision. Years later, the U.S. Supreme Court in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S.Ct. 2111 (June 23, 2022) limited the previous

two-part test approach that was widely used to evaluate Second Amendment challenges, stating, “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” (*Id.* at 2129–30).

The Court of Appeals of New Mexico had held, prior to *Bruen*, that the applicable standard of review for such claims is intermediate scrutiny. See *State v. Murillo*, 2015-NMCA-046, ¶ 13, 347 P.3d 284. To survive a challenge under intermediate scrutiny, the government must show that the statute is substantially related to an important government purpose. *Id.* However, based on the *Bruen* opinion, that analysis might no longer be applicable, and the law might now need to be found “consistent with this Nation’s historical tradition of firearm regulation” to be upheld if it is found to address conduct covered by the plain text of the Second Amendment. The enumerated list of what qualifies as an “assault weapon” under HB101 is extensive, and runs the risk of being challenged as inconsistent with said historical tradition of firearm regulation.

In addition to the United States Constitution, HB101 could face a legal challenge pursuant to the New Mexico Constitution. Article II, § 6 of the Constitution of New Mexico provides: “No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.” Similar statutes in other states have been upheld when challenged pursuant to their own state constitutions. However, these states have different constitutional language as compared to Article II, § 6 of the Constitution of New Mexico. These states include Vermont in the case of *State v. Misch*, 2021 VT 10, ¶ 67, 256 A.3d 519, 546, and Colorado in *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 61, 467 P.3d 314, 329. These statutes were evaluated pursuant to lower standard of reasonable-regulation test. “Under the reasonable-regulation test, the government may regulate firearms under its police power as long as its exercise of that power is reasonable.” *Misch*, 2021 VT 10, ¶ 58. Therefore, while these similar state statutes have been upheld, they have been subject to a different analysis than this proposed statute would potentially face upon constitutional review in New Mexico.

PERFORMANCE IMPLICATIONS

None to this office.

ADMINISTRATIVE IMPLICATIONS

None to this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 50, which similarly seeks to prohibit the possession of “large-capacity magazines” but does not address “assault weapons.”

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

HB 101 provides as an enumerated option to comport with its restriction on “large-capacity ammunition feeding device” to “sell the large-capacity magazine to a licensed firearms dealer” but does not provide an exception within its provisions for a “licensed firearms dealer” to possess, etc., said magazines without violating the law.

HB101 does not include exceptions for museum or similarly stored firearms on display or otherwise not in use but still considered operable.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A.