

LFC Requester:

Ellen Rabin

**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 February 9, 2023

Bill No: HB101CPS

Sponsor: Andrea Romero and Linda Serrato
 Short Title: Large-Capacity Magazines & Assault Weapons
 Agency Name and Code: 305–Office of the Attorney General
 Number:
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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.

Substitute to HB101: Reformats the prior bill, now titled "The Assault Weapons Regulation Act" (hereinafter, "Act").

-Adds the "import" and "caus[ing] to be manufactured, delivered, sold, imported or purchased by another" any of the enumerated weapons to the list of prohibited activities.

-Removes the "transfer" of enumerated weapons from the list of prohibited activities.

-Adds the "manufacture, possession, delivery, sale, importation and purchase" of .50 caliber rifles, .50 caliber cartridges, and "assault weapon attachments" to prohibition.

-Adds to the definition of "assault weapon" by providing additional modifications and styles of weapon,, including additional stocks, suppressors, grenade launcher attachments for shotguns and rifles, semiautomatic rifles with a fixed magazine of more than 10 rounds, pistols with shoulder braces, semiautomatic pistols with detachable magazines and magazines of more than 15 rounds or threaded barrels, semiautomatic firearms that can accept a belt ammunition feeding

device, and weapons that have been modified and fall under the enumerated definitions of “assault weapon”.

- Adds exceptions to the definition of “assault weapon”, including antiques, replicas of antiques, and firearms “manually operated by the bolt, pump, lever or slide action, unless the firearms is a shotgun with a revolving cylinder.

- Adds that the prohibition does not apply to individuals who file an affidavit of ownership of the weapon prior to March 1, 2024 under the following conditions:

 - They possessed the weapon prior to the effective date of the Act; or

 - They inherited the weapon from someone who had lawfully possessed it under the act

- Adds an enumerated list of conditions where someone may possess or transfer said weapons.

- Adds that the information from endorsement will be confidential and exempt from IPRA disclosure. Shall be disclosed only to law enforcement agencies acting in the performance of their duties.

- Adds the penalty for failing to submit an endorsement and possessing said weapons as a fourth degree felony.

- Adds a requirement for the department of public safety to update the list of allowable assault weapons annually.

- Adds a requirement for the department of public safety to carry out the Act and develop/implement a public notice and outreach campaign for awareness and compliance with the Act.

- Adds that the New Mexico Civil Rights Act is inapplicable to official actions taken in good faith in compliance with the Act.

- Adds severability language, that the rest of the Act survives if a part of it is held invalid.

- Adds that Section 4 of the Act shall still apply to above referenced weapons should Section 3 be held invalid.

FISCAL IMPLICATIONS

The substitute to HB101 would impose a requirement upon the department of public safety to carry out the Act and implement a public notice/awareness campaign. It would also likely create additional expenses to local law enforcement/judicial resources in enforcing the law.

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.

Additional issues under substitute to HB101

Much of the analysis of the original bill remains relevant. The additional classes/types of firearms to the prohibition makes it even more likely that this law will draw a constitutional challenge under *Bruen*. For instance, very few states have outlawed the possession of .50 caliber weapons and ammunition, and most of those prohibitions are no longer in effect. It seems likely that a ban on said weapons would draw a constitutional challenge under the *Bruen* standard of “consistent with this Nation’s historical tradition of firearm regulation”. Similar issues exist for the many of the additions to the definition of “assault weapon” under the Act. Additionally, very few states require registration of ownership for “assault weapons” or .50 caliber weapons/ammunition, and those restrictions have yet to be tested under the *Bruen* standard.

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.”

Relates to HB 72, which seeks to make it unlawful to possess/transfer semiautomatic firearm converters.

Relates to SB 171, which seeks to prohibit automatic firearm sales.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A.