

ENGROSSED SUBSTITUTE SENATE BILL 5078

State of Washington

67th Legislature

2021 Regular Session

By Senate Law & Justice (originally sponsored by Senators Lias, Kuderer, Darneille, Hunt, Nguyen, Pedersen, and Wilson, C.; by request of Attorney General)

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SECRETARY OF STATE
STATE OF WASHINGTON

1 AN ACT Relating to establishing firearms-related safety measures
2 to increase public safety by prohibiting the manufacture,
3 importation, distribution, selling, and offering for sale of large
4 capacity magazines, and by providing limited exemptions applicable to
5 licensed firearms manufacturers and dealers for purposes of sale to
6 armed forces branches and law enforcement agencies for purposes of
7 sale or transfer outside the state; amending RCW 9.41.010; adding new
8 sections to chapter 9.41 RCW; creating a new section; prescribing
9 penalties; and providing an effective date.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 NEW SECTION. **Sec. 1.** The legislature finds and declares that
12 gun violence is a threat to the public health and safety of
13 Washingtonians. Firearms equipped with large capacity magazines
14 increase casualties by allowing a shooter to keep firing for longer
15 periods of time without reloading. Large capacity magazines have been
16 used in all 10 of the deadliest mass shootings since 2009, and mass
17 shooting events from 2009 to 2018 where the use of large capacity
18 magazines caused twice as many deaths and 14 times as many injuries.
19 Documentary evidence following gun rampages, including the 2014
20 shooting at Seattle Pacific University, reveals many instances where
21 victims were able to escape or disarm the shooter during a pause to

1 reload, and such opportunities are necessarily reduced when large
2 capacity magazines are used. In addition, firearms equipped with
3 large capacity magazines account for an estimated 22 to 36 percent of
4 crime guns and up to 40 percent of crime guns used in serious violent
5 crimes. Based on this evidence, and on studies showing that mass
6 shooting fatalities declined during the 10-year period when the
7 federal assault weapon and large capacity magazine ban was in effect,
8 the legislature finds that restricting the sale, manufacture, and
9 distribution of large capacity magazines is likely to reduce gun
10 deaths and injuries. The legislature further finds that this is a
11 well-calibrated policy based on evidence that magazine capacity
12 limits do not interfere with responsible, lawful self-defense. The
13 legislature further finds that the threats to public safety posed by
14 large capacity magazines are heightened given current conditions. Our
15 country is in the midst of a pandemic, economic recession, social
16 tensions, and reckonings over racial justice. The years 2020 and 2021
17 have seen a sharp increase in gun sales and gun violence, as well as
18 fears over gun violence and incidents of armed intimidation. In this
19 volatile atmosphere, the legislature declares that it is time to
20 enhance public health and safety by limiting the sale of large
21 capacity magazines. The legislature intends to limit the prospective
22 sale of large capacity magazines, while allowing existing legal
23 owners to retain the large capacity magazines they currently own.

24 **Sec. 2.** RCW 9.41.010 and 2021 c 215 s 93 are each amended to
25 read as follows:

26 Unless the context clearly requires otherwise, the definitions in
27 this section apply throughout this chapter.

28 (1) "Antique firearm" means a firearm or replica of a firearm not
29 designed or redesigned for using rim fire or conventional center fire
30 ignition with fixed ammunition and manufactured in or before 1898,
31 including any matchlock, flintlock, percussion cap, or similar type
32 of ignition system and also any firearm using fixed ammunition
33 manufactured in or before 1898, for which ammunition is no longer
34 manufactured in the United States and is not readily available in the
35 ordinary channels of commercial trade.

36 (2) "Barrel length" means the distance from the bolt face of a
37 closed action down the length of the axis of the bore to the crown of
38 the muzzle, or in the case of a barrel with attachments to the end of
39 any legal device permanently attached to the end of the muzzle.

1 (3) "Bump-fire stock" means a butt stock designed to be attached
2 to a semiautomatic firearm with the effect of increasing the rate of
3 fire achievable with the semiautomatic firearm to that of a fully
4 automatic firearm by using the energy from the recoil of the firearm
5 to generate reciprocating action that facilitates repeated activation
6 of the trigger.

7 (4) "Crime of violence" means:

8 (a) Any of the following felonies, as now existing or hereafter
9 amended: Any felony defined under any law as a class A felony or an
10 attempt to commit a class A felony, criminal solicitation of or
11 criminal conspiracy to commit a class A felony, manslaughter in the
12 first degree, manslaughter in the second degree, indecent liberties
13 if committed by forcible compulsion, kidnapping in the second degree,
14 arson in the second degree, assault in the second degree, assault of
15 a child in the second degree, extortion in the first degree, burglary
16 in the second degree, residential burglary, and robbery in the second
17 degree;

18 (b) Any conviction for a felony offense in effect at any time
19 prior to June 6, 1996, which is comparable to a felony classified as
20 a crime of violence in (a) of this subsection; and

21 (c) Any federal or out-of-state conviction for an offense
22 comparable to a felony classified as a crime of violence under (a) or
23 (b) of this subsection.

24 (5) "Curio or relic" has the same meaning as provided in 27
25 C.F.R. Sec. 478.11.

26 (6) "Dealer" means a person engaged in the business of selling
27 firearms at wholesale or retail who has, or is required to have, a
28 federal firearms license under 18 U.S.C. Sec. 923(a). A person who
29 does not have, and is not required to have, a federal firearms
30 license under 18 U.S.C. Sec. 923(a), is not a dealer if that person
31 makes only occasional sales, exchanges, or purchases of firearms for
32 the enhancement of a personal collection or for a hobby, or sells all
33 or part of his or her personal collection of firearms.

34 (7) "Family or household member" has the same meaning as in RCW
35 7.105.010.

36 (8) "Felony" means any felony offense under the laws of this
37 state or any federal or out-of-state offense comparable to a felony
38 offense under the laws of this state.

39 (9) "Felony firearm offender" means a person who has previously
40 been convicted or found not guilty by reason of insanity in this

1 state of any felony firearm offense. A person is not a felony firearm
2 offender under this chapter if any and all qualifying offenses have
3 been the subject of an expungement, pardon, annulment, certificate,
4 or rehabilitation, or other equivalent procedure based on a finding
5 of the rehabilitation of the person convicted or a pardon, annulment,
6 or other equivalent procedure based on a finding of innocence.

7 (10) "Felony firearm offense" means:

8 (a) Any felony offense that is a violation of this chapter;

9 (b) A violation of RCW 9A.36.045;

10 (c) A violation of RCW 9A.56.300;

11 (d) A violation of RCW 9A.56.310;

12 (e) Any felony offense if the offender was armed with a firearm
13 in the commission of the offense.

14 (11) "Firearm" means a weapon or device from which a projectile
15 or projectiles may be fired by an explosive such as gunpowder.
16 "Firearm" does not include a flare gun or other pyrotechnic visual
17 distress signaling device, or a powder-actuated tool or other device
18 designed solely to be used for construction purposes.

19 (12) "Gun" has the same meaning as firearm.

20 (13) "Intimate partner" has the same meaning as provided in RCW
21 7.105.010.

22 (14) "Law enforcement officer" includes a general authority
23 Washington peace officer as defined in RCW 10.93.020, or a specially
24 commissioned Washington peace officer as defined in RCW 10.93.020.
25 "Law enforcement officer" also includes a limited authority
26 Washington peace officer as defined in RCW 10.93.020 if such officer
27 is duly authorized by his or her employer to carry a concealed
28 pistol.

29 (15) "Lawful permanent resident" has the same meaning afforded a
30 person "lawfully admitted for permanent residence" in 8 U.S.C. Sec.
31 1101(a)(20).

32 (16) "Licensed collector" means a person who is federally
33 licensed under 18 U.S.C. Sec. 923(b).

34 (17) "Licensed dealer" means a person who is federally licensed
35 under 18 U.S.C. Sec. 923(a).

36 (18) "Loaded" means:

37 (a) There is a cartridge in the chamber of the firearm;

38 (b) Cartridges are in a clip that is locked in place in the
39 firearm;

1 (c) There is a cartridge in the cylinder of the firearm, if the
2 firearm is a revolver;

3 (d) There is a cartridge in the tube or magazine that is inserted
4 in the action; or

5 (e) There is a ball in the barrel and the firearm is capped or
6 primed if the firearm is a muzzle loader.

7 (19) "Machine gun" means any firearm known as a machine gun,
8 mechanical rifle, submachine gun, or any other mechanism or
9 instrument not requiring that the trigger be pressed for each shot
10 and having a reservoir clip, disc, drum, belt, or other separable
11 mechanical device for storing, carrying, or supplying ammunition
12 which can be loaded into the firearm, mechanism, or instrument, and
13 fired therefrom at the rate of five or more shots per second.

14 (20) "Manufacture" means, with respect to a firearm or large
15 capacity magazine, the fabrication or construction of a firearm or
16 large capacity magazine.

17 (21) "Nonimmigrant alien" means a person defined as such in 8
18 U.S.C. Sec. 1101(a) (15).

19 (22) "Person" means any individual, corporation, company,
20 association, firm, partnership, club, organization, society, joint
21 stock company, or other legal entity.

22 (23) "Pistol" means any firearm with a barrel less than
23 (~~sixteen~~) 16 inches in length, or is designed to be held and fired
24 by the use of a single hand.

25 (24) "Rifle" means a weapon designed or redesigned, made or
26 remade, and intended to be fired from the shoulder and designed or
27 redesigned, made or remade, and intended to use the energy of the
28 explosive in a fixed metallic cartridge to fire only a single
29 projectile through a rifled bore for each single pull of the trigger.

30 (25) "Sale" and "sell" mean the actual approval of the delivery
31 of a firearm in consideration of payment or promise of payment.

32 (26) "Secure gun storage" means:

33 (a) A locked box, gun safe, or other secure locked storage space
34 that is designed to prevent unauthorized use or discharge of a
35 firearm; and

36 (b) The act of keeping an unloaded firearm stored by such means.

37 (27) "Semiautomatic assault rifle" means any rifle which utilizes
38 a portion of the energy of a firing cartridge to extract the fired
39 cartridge case and chamber the next round, and which requires a
40 separate pull of the trigger to fire each cartridge.

1 "Semiautomatic assault rifle" does not include antique firearms,
2 any firearm that has been made permanently inoperable, or any firearm
3 that is manually operated by bolt, pump, lever, or slide action.

4 (28) "Serious offense" means any of the following felonies or a
5 felony attempt to commit any of the following felonies, as now
6 existing or hereafter amended:

7 (a) Any crime of violence;

8 (b) Any felony violation of the uniform controlled substances
9 act, chapter 69.50 RCW, that is classified as a class B felony or
10 that has a maximum term of imprisonment of at least (~~ten~~) 10 years;

11 (c) Child molestation in the second degree;

12 (d) Incest when committed against a child under age (~~fourteen~~)
13 14;

14 (e) Indecent liberties;

15 (f) Leading organized crime;

16 (g) Promoting prostitution in the first degree;

17 (h) Rape in the third degree;

18 (i) Drive-by shooting;

19 (j) Sexual exploitation;

20 (k) Vehicular assault, when caused by the operation or driving of
21 a vehicle by a person while under the influence of intoxicating
22 liquor or any drug or by the operation or driving of a vehicle in a
23 reckless manner;

24 (l) Vehicular homicide, when proximately caused by the driving of
25 any vehicle by any person while under the influence of intoxicating
26 liquor or any drug as defined by RCW 46.61.502, or by the operation
27 of any vehicle in a reckless manner;

28 (m) Any other class B felony offense with a finding of sexual
29 motivation, as "sexual motivation" is defined under RCW 9.94A.030;

30 (n) Any other felony with a deadly weapon verdict under RCW
31 9.94A.825;

32 (o) Any felony offense in effect at any time prior to June 6,
33 1996, that is comparable to a serious offense, or any federal or out-
34 of-state conviction for an offense that under the laws of this state
35 would be a felony classified as a serious offense; or

36 (p) Any felony conviction under RCW 9.41.115.

37 (29) "Short-barreled rifle" means a rifle having one or more
38 barrels less than (~~sixteen~~) 16 inches in length and any weapon made
39 from a rifle by any means of modification if such modified weapon has
40 an overall length of less than (~~twenty-six~~) 26 inches.

1 (30) "Short-barreled shotgun" means a shotgun having one or more
2 barrels less than (~~eighteen~~) 18 inches in length and any weapon
3 made from a shotgun by any means of modification if such modified
4 weapon has an overall length of less than (~~twenty-six~~) 26 inches.

5 (31) "Shotgun" means a weapon with one or more barrels, designed
6 or redesigned, made or remade, and intended to be fired from the
7 shoulder and designed or redesigned, made or remade, and intended to
8 use the energy of the explosive in a fixed shotgun shell to fire
9 through a smooth bore either a number of ball shot or a single
10 projectile for each single pull of the trigger.

11 (32) "Transfer" means the intended delivery of a firearm to
12 another person without consideration of payment or promise of payment
13 including, but not limited to, gifts and loans. "Transfer" does not
14 include the delivery of a firearm owned or leased by an entity
15 licensed or qualified to do business in the state of Washington to,
16 or return of such a firearm by, any of that entity's employees or
17 agents, defined to include volunteers participating in an honor
18 guard, for lawful purposes in the ordinary course of business.

19 (33) "Undetectable firearm" means any firearm that is not as
20 detectable as 3.7 ounces of 17-4 PH stainless steel by walk-through
21 metal detectors or magnetometers commonly used at airports or any
22 firearm where the barrel, the slide or cylinder, or the frame or
23 receiver of the firearm would not generate an image that accurately
24 depicts the shape of the part when examined by the types of X-ray
25 machines commonly used at airports.

26 (34) "Unlicensed person" means any person who is not a licensed
27 dealer under this chapter.

28 (35) "Untraceable firearm" means any firearm manufactured after
29 July 1, 2019, that is not an antique firearm and that cannot be
30 traced by law enforcement by means of a serial number affixed to the
31 firearm by a federally licensed manufacturer or importer.

32 (36) "Large capacity magazine" means an ammunition feeding device
33 with the capacity to accept more than 10 rounds of ammunition, or any
34 conversion kit, part, or combination of parts, from which such a
35 device can be assembled if those parts are in possession of or under
36 the control of the same person, but shall not be construed to include
37 any of the following:

38 (a) An ammunition feeding device that has been permanently
39 altered so that it cannot accommodate more than 10 rounds of
40 ammunition;

1 (b) A 22 caliber tube ammunition feeding device; or

2 (c) A tubular magazine that is contained in a lever-action
3 firearm.

4 (37) "Distribute" means to give out, provide, make available, or
5 deliver a firearm or large capacity magazine to any person in this
6 state, with or without consideration, whether the distributor is in-
7 state or out-of-state. "Distribute" includes, but is not limited to,
8 filling orders placed in this state, online or otherwise.
9 "Distribute" also includes causing a firearm or large capacity
10 magazine to be delivered in this state.

11 (38) "Import" means to move, transport, or receive an item from a
12 place outside the territorial limits of the state of Washington to a
13 place inside the territorial limits of the state of Washington.
14 "Import" does not mean situations where an individual possesses a
15 large capacity magazine when departing from, and returning to,
16 Washington state, so long as the individual is returning to
17 Washington in possession of the same large capacity magazine the
18 individual transported out of state.

19 NEW SECTION. Sec. 3. A new section is added to chapter 9.41 RCW
20 to read as follows:

21 (1) No person in this state may manufacture, import, distribute,
22 sell, or offer for sale any large capacity magazine, except as
23 authorized in this section.

24 (2) Subsection (1) of this section does not apply to any of the
25 following:

26 (a) The manufacture, importation, distribution, offer for sale,
27 or sale of a large capacity magazine by a licensed firearms
28 manufacturer for the purposes of sale to any branch of the armed
29 forces of the United States or the state of Washington, or to a law
30 enforcement agency in this state for use by that agency or its
31 employees for law enforcement purposes;

32 (b) The importation, distribution, offer for sale, or sale of a
33 large capacity magazine by a dealer that is properly licensed under
34 federal and state law for the purpose of sale to any branch of the
35 armed forces of the United States or the state of Washington, or to a
36 law enforcement agency in this state for use by that agency or its
37 employees for law enforcement purposes;

38 (c) The distribution, offer for sale, or sale of a large capacity
39 magazine to or by a dealer that is properly licensed under federal

1 and state law where the dealer acquires the large capacity magazine
2 from a person legally authorized to possess or transfer the large
3 capacity magazine for the purpose of selling or transferring the
4 large capacity magazine to a person who does not reside in this
5 state.

6 (3) A person who violates this section is guilty of a gross
7 misdemeanor punishable under chapter 9A.20 RCW.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.41 RCW
9 to read as follows:

10 Distributing, selling, offering for sale, or facilitating the
11 sale, distribution, or transfer of a large capacity magazine online
12 is an unfair or deceptive act or practice or unfair method of
13 competition in the conduct of trade or commerce for purposes of the
14 consumer protection act, chapter 19.86 RCW.

15 NEW SECTION. **Sec. 5.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2022.

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