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FISCAL IMPACT REPORT

SPONSOR McQueen **ORIGINAL DATE** _____ **LAST UPDATED** _____ **HB** 17

SHORT TITLE Semi-Automatic Gun Modification Prohibition **SB** _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate see fiscal impact	Indeterminate see fiscal impact	Indeterminate see fiscal impact		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Public Defender Department (PDD)
- New Mexico Attorney General’s Office (NMAG)
- New Mexico Sentencing Commission (NMSC)
- Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 17 proposes to add a new section of Chapter 30, Article 7 NMSA 1978 to make the possession of a device or accessory that accelerates the rate fire of a semi-automatic firearm a fourth degree felony.

FISCAL IMPLICATIONS

According to the Public Defender Department (PDD), hundreds of such devices are lawfully owned in New Mexico at present, and - if enactment is not properly publicized - their continued possession would constitute hundreds of prospective felony trials. If more high-penalty trials result, it may need to hire more trial attorneys with greater experience. Accurate prediction of the

fiscal impact is thus impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed new felony crime.

PDD estimates the cost of a mid-level trial attorney between \$92.5 thousand and \$99.7 thousand depending on the area of the state where additional attorneys would be needed. The cost outside of Santa Fe and Albuquerque are at the higher level because it has to provide a salary differential to maintain qualified employees. In addition to the mid-level attorney, PDD would also need to hire support staff, a secretary, investigator and social worker, which would cost on average \$77.1 thousand per attorney. Other annual operating costs per attorney are estimated at \$2.3 thousand. Nonrecurring costs to add a new attorney and support staff is estimated at \$3.1 thousand. The average impact to the general fund annual operating budget to add one attorney is \$175.1 per year.

SIGNIFICANT ISSUES

The Administrative Office of the Courts (AOC) in its analysis states that there are numerous devices that can increase the rate of fire of a semi-automatic firearm. Perhaps the most well-known device is a “bump stock,” which the Bureau of Alcohol, Tobacco, Firearms and Explosives reported was found on twelve of the twenty-three guns in the hotel room of the infamous Mandalay Bay/Las Vegas shooter, Stephen Paddock.

PDD reports that in response to the murders at the October 2017, Las Vegas Music Festival, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives is already in the process of enacting a rule that would regulate such “bump fire” devices as “machineguns” under federal law.

The National Conference of State Legislatures (NCSL), in its December 2017 State Legislatures Magazine, reports that bump fire stock modifications are legal throughout the United States under federal law, though their use is restricted by several states. California and New York ban them, while Massachusetts, Michigan, Minnesota, New Jersey and Oregon prohibit devices that allow automatic fire or weapons that fire multiple rounds with a single, continuous trigger pull. Additionally, reports the NCSL, seven states and the District of Columbia have assault weapons bans that could be interpreted to include bump stocks.

The Administrative Office of the District Attorneys (AODA) reports that the definition of a “rate of fire accelerator” is similar, but not identical, to legislation pending in Congress. (Cf., S. 1916, “(I)t shall be unlawful for any person to import, sell, manufacture, transfer or possess...a trigger crank, a bump-fire device, or any part, combination of parts, component, device attachment, or accessory that is designed or functions to accelerate the rate of fire or a semiautomatic rifle. but does not convert the semiautomatic rifle into a machine gun,” and H.R. 3999, “It shall be unlawful for any person...to manufacture, possess, or transfer any part or combination of parts that is designed to increase the rate of fire of a semiautomatic rifle but does not convert the semiautomatic rifle into a machine gun...”). Those congressional bills also include a requirement that the items have an effect on interstate or foreign commerce.

TECHNICAL ISSUES

AODA point out that the bill does not specify what the effective date of the legislation would be, and does not include any emergency clause, so if passed and signed by the governor would go into effect 90 days after the adjournment of the legislature. See, Art. III, Sec. 23, NM

Constitution. Persons who had previously obtained a “rate of fire accelerator” before the effective date might challenge it as a violation of the prohibition against ex post facto laws. See, Art. II, Sec. 19, NM Constitution.

AOC indicates that the bill does not provide a definition of “rate of fire accelerator”.

OTHER SUBSTANTIVE ISSUES

PDD provide a link to YouTube videos showing common items such as rubber bands or simply locking the trigger finger in place that will convert a semi-automatic firearm into a full on automatic weapon. See the YouTube demonstrations: https://www.youtube.com/watch?v=RZ-FV_VRIXU&feature=youtu.be and <https://www.youtube.com/watch?v=m5XzQ1BS7gU> or a stick: <https://www.youtube.com/watch?v=QkWuYr0cD4M>.

According to AODA, Massachusetts passed a bill in November that adds “bump stocks” and “trigger cranks” to machine gun in their firearms law and makes it illegal to possess those devices. California has had a similar law since 2011.

The National Conference of State Legislators (NCSL) reports in a November 2017 publication that California and New York ban bump-fire stock modifications, and Massachusetts, Michigan Minnesota, New Jersey and Oregon prohibit the devices that allow automatic fire or weapons that fire multiple rounds with a single shot.

The Congressional Research Services published “Gun Control: Bump-Fire Stocks” in October 2017 clarifying certain devices covered by the National Firearms Act of 1934, see attachment.

ALTERNATIVES

PDD suggest waiting until the federal ban-by-rule that is in process is finalized, which is probably after the ATF’s comment period closes on January 25, 2018.

AOC asks whether it would be preferable to make unlawful the *use* of a “firearm accessory or other device, part or combination of parts that is designed or functions to accelerate the rate of fire of a semiautomatic firearm”, rather than or in addition to the possession of the same. If the desire remains to prevent the possession, as well as the use, a definition of “rate of fire accelerator” could be drafted that excludes items or devices such as rubber bands not specifically designed to increase the rate of fire of a semiautomatic weapon, but which could function to do so.

ABS/jle

Gun Control: "Bump-Fire" Stocks

October 10, 2017 (IN10801)

Related Author

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Following the October 1, 2017, Las Vegas, NV, attack, there has been significant congressional interest in "bump-fire" stocks that can assist a person in firing a semiautomatic rifle repeatedly, sometimes at rates usually associated with fully automatic machineguns. It has been [reported](#) that the assailant in this attack had 12 semiautomatic rifles outfitted with "bump-fire" stocks. The terms "bump-fire" and "slide-fire" are often used interchangeably.

Under the Gun Control Act of 1968 (GCA), a semiautomatic rifle is defined as:

Any repeating 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 ([18 U.S.C. § 921\(a\)\(28\)](#)).

Semiautomatic hunting rifles have been available to civilians in the United States since the 1890s.

Under the 1934 National Firearms Act (NFA), a machinegun is defined as, among other things,

Any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot without manual reloading, by a single function of the trigger ([26 U.S.C. § 5845\(b\)](#)).

In 1986, Congress prohibited the possession or transfer of machineguns that were not lawfully possessed before the President signed the bill on May 19, 1986 ([18 U.S.C. § 922\(o\)](#)).

ATF "Bump-Fire" Stock Classifications Through Determination Letters and Rulings

The Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has evaluated and classified an unknown number of "bump-fire" or "slide-fire" stocks through "private letter rulings" and at least one published ATF ruling.

According to ATF, private letter rulings are a means to make specific classification decisions about firearms and ammunition. The firearms industry and individuals may submit items to ATF to make determinations for classification (e.g., a "part," a "firearm," a "machinegun," a "silencer," etc.). These submissions are not required, but are encouraged by ATF to ensure compliance with federal law. ATF makes a classification determination based on the most current laws and regulations at the time of submission and on the results of a physical examination and testing of that specific

item. ATF maintains that private letter rulings are proprietary and does not release these letters without written approval from the recipient.

As opposed to private letter rulings, ATF also publishes letter rulings signed by the ATF Director. ATF rulings are intended to promote uniform application of the laws and regulations it administers, and these rulings apply retroactively unless otherwise indicated and may be used as precedent.

In November 2003 and January 2004, ATF initially determined, through private letter rulings, that a "bump-fire" system, known as the Akins Accelerator, was not regulated as a firearm under either the NFA or GCA in private letter rulings according to an appellant brief submitted in federal court. On December 13, 2006, however, ATF reversed its determinations by publishing a rule, [ATF Rul. 2006-2](#), which reclassified bump-fire systems like the Akins Accelerator as a machinegun, because it was equipped with a "coiled spring" and initiated automatic fire with a single trigger pull. William Akins, the inventor of the Akins Accelerator, appealed the ATF ruling in federal court. In an unpublished decision, the U.S. Court of Appeals for the Eleventh Circuit upheld ATF's decision (see *Akins v. United States*, 312 F. App'x 197 (11th Cir. 2009)).

ATF Classified Modified Stocks as Unregulated Under Federal Law

Other manufacturers submitted modified "bump-fire" or "slide-fire" stocks that did not include a "coiled spring" or similar mechanisms to the ATF for classification. One manufacturer made a [private letter ruling dated June 7, 2010](#), available on the Internet. In this letter, ATF concluded the following:

The stock has no automatically functioning mechanical parts or springs and performs no automatic mechanical function when installed. In order to use the installed device, the shooter must apply constant forward pressure with the non-shooting hand and constant rearward pressure with the shooting hand. Accordingly, we find that the "bump-stock" is a firearm part and is not regulated as a firearm under [the] Gun Control Act or the National Firearms Act.

Semiautomatic Rifle Bump-Fire Technique

In an October 1, 2012, edition of *Shotgun News*, one author described the technique of using a bump-fire stock:

When you wish to bump fire, you shoulder the rifle and it slides to the rear in the stock. Next, when you are aiming at a safe target and are ready to fire, you place your finger inside the trigger guard and rest it against the extension on the left side. Holding your trigger finger in place, you then merely push slightly forward with your left hand, maintaining forward pressure.

As you push forward, the rifle slides forward slightly in the stock, the trigger comes in contact with your finger and is depressed firing the rifle. The rifle's recoil then moves it slightly to the rear in the stock, allowing the trigger to reset before the forward pressure from your left hand slides it back forward, and the cycle repeats. ("SlideFire Stock: The Easy Way to Become a Bump-Fire Bandit," by David M. Fortier, pp. 26-31.)

It is noteworthy that some individuals can achieve bump-firing without a customized stock through trial and error. Nevertheless, these customized stocks arguably assist individuals with bump-firing, allowing them to sustain continuous semiautomatic rifle fire at rates that could not normally be sustained without a greater amount of practice.

Concluding Observations

From the ATF rulings discussed above, it appears that bump-fire stocks with "coiled springs" and that initiate automatic fire with a single trigger pull are regulated as firearms under the NFA; however, modified stocks without any "automatically functioning mechanical parts or springs" are not similarly regulated. Some [Members](#) of Congress have called on ATF to reevaluate its bump-fire stock determinations, while other [Members](#) have introduced legislation to prohibit such devices ([S. 1916](#), [H.R. 3947](#), and [H.R. 3999](#)).