

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: February 6, 2025

Check all that apply:

Bill Number: SB 279

Original x Correction
Amendment Substitute

Sponsor: Sen. Micaelita Debbie
O'Malley, Sen. Heather
Berghams, Rep. Andrea
Romero, Rep. Charlotte Little,
and Rep. Patricia Roybal
Caballero

**Agency Name and
Code Number:** 305 – New Mexico
Department of Justice

Person Writing

Analysis: Charles J. Gutierrez, ASG

**Short
Title:** Gas-Operated Semiauto
Firearms Exclusion Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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 Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. 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 NM Department of Justice.

BILL SUMMARY

Synopsis:

Section 1 enacts a section that entitles the bill the Gas-Operated Semiautomatic Firearms Exclusion Act (Act).

Section 2 enacts a section that defines (1) ammunition, (2) cycle the action, (3) fixed magazine, (4) gas-operated (5) immediate family member, (6) large-capacity ammunition feeding device, (7) machine gun, (8) rapid dire device, and (9) semiautomatic firearm.

Section 3 enacts a section prohibiting gas-operated firearms, which, generally, are those that use the pressure of a propellant gas to cycle the action. Specifically, subsection A makes it unlawful to import, sell, manufacture, transfer, or receive (1) gas-operated firearms on the list of prohibited firearms identified by the attorney general, (2) any non-prohibited firearm that has been modified to operate as a firearm included on the list of prohibited firearms identified by the attorney general, (3) a combination of parts designed to modify a non-prohibited firearm to operate as a firearm included on the list of prohibited firearms identified by the attorney general, (4) a combination of parts that functions to produce a gas-operated semi-automatic cycling action. Pursuant to subsection B, it is unlawful to possess a device defined in (A)(1)-(5) beginning in 2026. Subsection C provides exceptions for (1) committing prescribed conduct under federal authority, (2) committing prescribed conduct pursuant to the federal Atomic Energy Act, and (3) a grandfather provision for possessing firearms that were lawfully possessed prior to July 1, 2025, and certified prior to 2026. Under subsection D, the latter exception also allows for the transfer of a certified firearm to an immediate family member prior to 2026. Subsection E requires firearms dealers to mark firearms exempted under subsection C(1)-(2) in a manner prescribed by the attorney general. Subsection F provides that exceptions to the definition of gas-operated semiautomatic firearms, including those that (1) use .22 caliber or less rimfire ammunition, (2) are rifles that (a) are single shot, (b) are breech loading with a two round capacity, (c) are muzzleloading and smoothbore shoulder fired, (d) are bolt action, lever action, or pump action, or (e) have a fixed magazine with less than a ten-round capacity, (3) are shotguns that fit the definitions of subsection 2(a)-(e), and, additionally includes semiautomatic or autoloading shotguns, (4) are breech loading firearms holding a single cartridge or shotgun shell that must be reloaded, and (5) are handguns that fit the definitions of subsection 2(a)-(e).

Section 4 enacts a section generally prohibiting large capacity feeding devices, which are defined as devices (such as magazines or belts) that have an overall capacity of 10 or more rounds of ammunition, unless they operate with .22 caliber rimfire ammunition or less. Subsection A makes it unlawful to import, sell, manufacture, transfer or receive, and possess (after July 1, 2025) large-capacity feeding devices. Subsection B allows the transfer of these devices to a person living in another state or to a firearms dealer. Subsection C provides exceptions for (1) committing prescribed conduct under federal authority, and (2) committing prescribed conduct pursuant to the federal Atomic Energy Act. Subsection D requires firearms dealers to mark firearms exempted under subsection C(1)-(2) in a manner prescribed by the attorney general.

Section 5 enacts a section generally prohibiting machine guns and rapid-fire devices. A machine gun is defined by this bill as having the same meaning as Section 5845(b) of the National Firearms Act, including a semiautomatic firearm modified to approximate the action of a machine gun. A rapid-fire device is a device that materially increases the rate of fire of a firearm or enables a semiautomatic firearm to approximate the rate of fire of a machine gun. Subsection A provides that it is unlawful to import, sell, manufacture, transfer, receive, or possess a machine gun or rapid-fire device. Subsection B provides exceptions for (1) committing prescribed conduct under federal authority, and (2) committing prescribed conduct pursuant to the federal Atomic Energy Act, and (3) those lawfully registered with the United States bureau of alcohol, tobacco, firearms, and explosives pursuant to the National Firearms Act.

Section 6 enacts a section governing the list of regulated weapons. Subsection A requires the attorney general, in consultation with the department of public safety (DPS), to identify a list of gas-operated semi-automatic firearms subject to the exclusion and to publish it on its website no later than July 1, 2025. Subsection B requires the DPS to (1) require licensed firearms dealers to obtain acknowledgement of the list of prohibited firearms prior to any sale of a non-prohibited firearm, (2) require clear and convincing evidence before a firearm is removed from the list, and (3) advise the attorney general in carrying out its duty to create the list. Subsection C allows the attorney general to request additional information from manufacturers in creating the list. Subsection D requires the attorney general, in consultation with DPS, to publish on its website the manner in which large capacity feeding devices and gas-operated semiautomatic firearms shall be marked.

Section 7 enacts a section governing certification of semiautomatic firearms. Subsection A requires the attorney general, in consultation with DPS, to develop and make available a system for certifying gas-operated semiautomatic firearms, which shall require gas-operated semiautomatic firearm owners to complete a certification form. Subsection B requires the attorney general, in consultation with DPS, to promulgate rules that govern the certification form and submission process to both licensed firearm dealers and the attorney general. It contains specific inclusions for these rules. Subsection C contains requirements for the certification form, which include an affirmation and identifying information about the firearm and owner. Subsection D mandates that the certification be kept confidential and exempt from IPRA. Subsection E requires mandatory language regarding false statements in the certification.

Section 8 enacts a section governing nonresidents. Subsection A allows non-residents a 24-hour period to transport a gas-operated semiautomatic firearm for a lawful purpose to a place where it may be lawfully possessed as long as the firearm is not readily accessible or directly accessible from the passenger compartment. Subsection B allows a nonresident who moves into New Mexico with a lawfully possessed gas-powered semiautomatic firearm to complete a certification.

Section 9 enacts penalties. Subsection A provides that whoever violates the Act is guilty of a misdemeanor. Subsection B provides that it is a fourth-degree felony to attempt to commit or commit a felony while in possession of a prohibited gas-operated semiautomatic firearm.

Section 10 enacts a section stating the legislative intent that if any part of the Act is declared invalid, the remainder or its application to other situations or persons shall not be affected.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The bill's prohibition on gas-powered semiautomatic firearms, large-capacity feeding devices, and rapid fire devices will likely face challenges based on the Second Amendment of the United States Constitution and its New Mexico analog, Article II, Section 6 of the New Mexico Constitution. Previously, the Federal Assault Weapons Ban of 1994 imposed a federal prohibition against assault weapons and large capacity magazines. The ban, although never ruled unconstitutional, was challenged. It expired in September 2004 through a sunset provision. Subsequently, the United States Supreme Court decided *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022), and set forth the current framework for evaluating Second Amendment claims. That is, when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct, and to justify a firearm regulation the government must demonstrate that the regulation is "consistent with the Nation's historical tradition of firearm regulation." *Id. Bruen* firmly rejected any application of an intermediate scrutiny standard or component, an approach that had been applied by New Mexico appellate courts. *See State v. Murrillo*, 2015-NMCA-046, ¶ 13 (to survive a challenge, the state must show that the regulation is substantially related to an important government purpose). More recently, in *United States v. Rahimi*, 602 U.S. 680 (2024), the Court clarified that in analyzing historical tradition, the government need not show a strict match, but only a similar analog. In *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016), the United State Supreme Court reiterated that the Second Amendment protects weapons for self-defense purposes and not only for military reasons, and that it applies to weapons "that were not in existence at the time of the founding." The Court clarified that simply being a "modern invention" did not make a weapon dangerous and unusual. *Id.*

Although the United States Supreme Court has not addressed prohibitions on assault style weapons or large capacity feeding devices in its modern jurisprudence, some lower federal courts have issued opinions that may weigh in favor of some provisions of this bill surviving a Second Amendment challenge. *See Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 46 (1st Cir. 2024) (denying preliminary injunction on claimants challenge to state ban large capacity feeding devices on basis that it is consistent with the Nation's historical traditional of firearm regulation); *see also Duncan v. Bonta*, 83 F. F.4th 803, 806 (9th Cir. 2023) (denying preliminary injunction on California's large capacity feeding device ban and noting that "ten other federal district courts have considered a Second Amendment challenge to large-capacity magazine restrictions since *Bruen* was decided"). These supporting cases generally reason that large capacity feeding devices and assault weapons are military grade weapons and/or weapons outside the scope of self-defense. *See Bevis v. City of Naperville, Illinois*, 85 F.4th 1175 (7th Cir. 2023) (denying preliminary injunction on ground that claimants did not have a likelihood of success on the merits in challenging city's assault weapon and large capacity magazine prohibition because it prohibits military grade weapons, not weapons for "self-defense," and therefore not covered

“arms” under the Second Amendment); *id.* (“Coming directly to the question whether the weapons and feeding devices covered by the challenged legislation enjoy Second Amendment protection, at the first step of the *Bruen* analysis, we conclude that the answer is no. We come to this conclusion because these assault weapons and high-capacity magazines are much more like machineguns and military-grade weaponry than they are like the many different types of firearms that are used for individual self-defense (or so the legislature was entitled to conclude).”; *see also Ocean State Tactical, LLC*, 95 F.4th at 46 (based on the same rationale, determining the prohibition was consistent with the Nation’s historical traditional of firearm regulation).

PERFORMANCE IMPLICATIONS

This bill requires the attorney general to fulfil several duties, including:

- create a list of gas-operated semi-automatic firearms subject to the exclusion and to publish it on its website no later than July 1, 2025;
- publish on its website the manner in which large capacity feeding devices and gas-operated semiautomatic firearms shall be marked;
- develop and make available a system for certifying gas-operated semiautomatic firearms; and
- promulgate rules that govern the certification form and submission process to both licensed firearm dealers and the attorney general.

ADMINISTRATIVE IMPLICATIONS

See performance implications.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 38 POSSESSION OF WEAPON CONVERSION DEVICE – This bill also makes it unlawful to possess a conversion device that modifies the rate of fire of a semiautomatic firearm.

HB 83 PERMITLESS CARRY OF FIREARMS – This bill allows adults to carry concealed firearms without a permit.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None.