

Proposed Ordinance Making it Unlawful to Possess Bump Stocks

Sponsored By: Councilman Rafael G. Espinoza

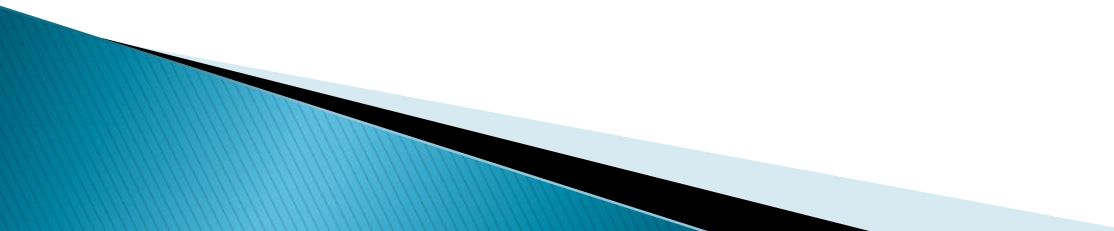
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Denver's Assault Weapons Ban

- ▶ In existence since 1989, D.R.M.C. Section 38-130 makes it illegal to carry, store, or otherwise possess a semi automatic weapon with a detachable magazine with a capacity of 21 or more rounds.
 - ▶ It is also unlawful to merely own or possess a high capacity magazine with 21 or more rounds, even if it is detached from a firearm.
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Rationale

- ▶ Courts have determined that Denver's interest in crime-prevention was a legitimate basis for Denver's ban on assault-style weapons and high capacity magazines.
 - ▶ On October 1, 2017, 58 people were killed and several hundred were wounded at a Las Vegas, Nevada, music festival. The shooter used multiple bump stocks to allow his weapon to fire at a rate similar to that of a fully automatic weapon.
 - ▶ At the time of the incident, bump stocks were not regulated by any city government nor the federal government, but the incident in Las Vegas reignited the debate about gun laws, with attention on bump stocks.
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Constitutional Challenge to Denver's Assault Weapons Ban

- In 1994, Denver's assault weapons ordinance was challenged as a violation of the state constitutional right to bear arms.
- The Colorado Supreme Court determined that the ordinance was reasonably related to a legitimate interest in preventing crime and a valid exercise of Denver's police power. *Robertson v. City and County of Denver*, 874 P.2d 325 (Colo. 1994).
- Key dichotomy: Defensive firearms ("hand guns") v. offensive firearms ("assault weapons").

2003 State Law

- In 2003, under Governor Bill Owens, the state legislature adopted two bills, one of which specifically targeted Denver's assault weapons ban.
- Colorado Revised Statute § 29-11.7-103:

A local government may not enact an ordinance, regulation, or other law that prohibits the sale, purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state or federal law. Any such ordinance, regulation, or other law enacted by a local government prior to March 18, 2003, is void and unenforceable.

2003 State Law

- Denver brought a declaratory judgment action seeking an order holding that the assault weapons provision did not conflict with any state law.
- A Denver District Court determined that Denver's law did not conflict with existing laws and that Denver's interest in limiting the impact of assault style weapons far outweighed the State's interest in uniformity of gun laws. *City and County of Denver*, No. 03-cv-3809, 2004 WL 5212983 (Nov. 5, 2004).
- Both parties appealed to the Colorado Supreme Court and the Court deadlocked. *State v. City and County of Denver*, 139 P.3d 635 (Colo. 2006). Thus, the District Court decision stands as the current law.

2013 State Law

- ▶ The July 2012 Aurora theater shooting and the December 2012 Sandy Hook Elementary School shooting reignited the political debate on gun control, with one issue being the “easy access” James Eagan Holmes had to semi-automatic rifles and high-capacity magazines.
- ▶ In 2013, the State of Colorado adopted its own assault weapons ban which generally makes it illegal to possess a magazine with more than 15 rounds.
- ▶ One of the proposed amendments to Bill 17-1400 reduces the capacity limit for magazines from 21 or more rounds to no more than 15 rounds, in conformance with the 2013 state law.

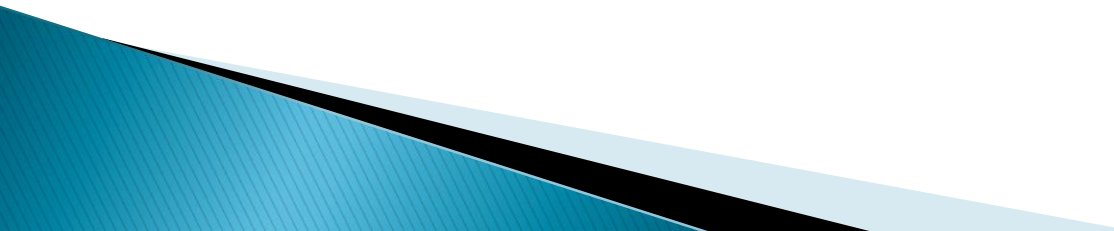
Legal Framework of the Bump Stock Device

- ▶ Neither the State of Colorado nor the federal government regulates the device.
- ▶ In fact, in 2010, the Alcohol, Tobacco, Firearms, and Explosives Bureau of the Department of Justice (“ATF”) rendered an opinion that the device did not change the triggering of the gun and, therefore, did not constitute a “machine gun” under the National Firearms Act of 1934 or the Gun Control Act of 1968.

ATF Advanced Notice of Proposed Rulemaking

- ▶ On December 26, 2017, ATF published in the Federal Register an Advanced Notice of Proposed Rulemaking to reinterpret whether bump stocks fall within the statutory definition of “machine gun” in the National Firearms Act of 1934 and the Gun Control Act of 1968.
- ▶ The ATF has not disseminated a draft rule, but rather has sent a series of questions to manufacturers, retailers, and consumers seeking comments on the practical effects of regulating bump stock devices.
- ▶ Denver would prudently revisit the bump stock ordinance if ATF adopts a regulation.

Other State and City Laws

- ▶ In 2012, the State of California outlawed bump stocks.
 - ▶ In November of 2017, the Commonwealth of Massachusetts amended a state law to add bump stock to the definition of machine gun, thereby banning the device.
 - ▶ In December of 2017, the City of Columbia, South Carolina adopted a law banning the attachment of bump stock to rifles.
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Key Elements of Proposed Amendments

Section 1. Definitions.

- “Assault weapon” shall include “all semiautomatic action, centering rifles with a detachable magazine with a capacity of more than fifteen (15) rounds.
- “Bump stock” shall mean “any device for a pistol, rifle, or shotgun that increases the rate of fire achievable with such weapon by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.”

Section 2. High capacity magazines and bump stock prohibited.

- Makes it unlawful to “carry, store or otherwise possess a magazine which will hold or may be modified to hold more than fifteen (15) rounds.
- Makes it unlawful to “sell, carry, store, or otherwise possess a bump stock.”

Penalty

Any person, firm or corporation who is convicted of violating any provision of this section shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than nine hundred ninety-nine dollars (\$999.00) and a term of incarceration of not less than ten (10) days nor more than one hundred eighty (180) days.

Questions?

