

From: [David Kopel](#)
To: [dencc - City Council](#)
Subject: Bill 17-400
Date: Tuesday, January 02, 2018 2:46:22 PM

Dear Denver City Council:

I am writing to address some technical issues in Bill 17-400.

Bump stocks. The bill's definition of "bump stock" is more precise than in some bills that have been introduced elsewhere, and which contain broad language that goes far beyond bump stocks. The careful definition drafting is helpful.

Magazines. A Denver Post article of Dec. 29 indicated that Bill 17-400 would simply duplicate the 2013 state statute on magazines. This is not correct. The state statute has a grandfathering provision for magazines that were possessed as of July 1, 2013. Denver ordinance 38-130(i) has no grandfathering for magazines. So consider a Denver resident who as of 2013 owned a Smith & Wesson pistol with the standard manufacturer-supplied 16 round magazine. Under the state statute, the Denver resident may continue to possess the magazine. C.R.S. 18-12-302(2). But Bill 17-400 would instantly turn that magazine into criminal contraband. This would affect a great many people in Denver, since magazines of 16 to 20 rounds have long been common for handguns. For rifles, 20 round magazines have also been common for many years.

As a policy matter, instantly criminalizing lawfully possessed common items seems unfair. As a legal matter, a Denver ordinance that did not duplicate the state's grandfather clause might be legally challenged on grounds of preemption: Denver would be prohibiting items that a state statute has specifically said may be possessed.

Another preemption issue involves the statewide concealed carry licensing law. In 2006, the Colorado Supreme Court upheld a Denver District Court ruling that the statewide licensing law is completely preemptive, and Denver may not impose any additional restrictions on licensed carry. *State v. City and County of Denver*, 139 P.3d 635 (Colo. 2006). Because Bill 17-400 amends ordinance 38-130(i), the effect would be to prohibit all Coloradans who travel through Denver from the licensed carry of their handguns with lawful 16-20 round magazines. This seems to directly contradict state law. The legislature in 2013 chose to make no changes in the fully-preemptive concealed carry act, and it also chose to allow grandfathered magazine owners to continue to carry those magazines pursuant to the concealed carry act.

Finally, C.R.S. 18-12-105.6 fully preempts local ordinances against carrying a "weapon" in automobiles "for hunting or for lawful protection." Unfortunately, Denver Ordinance 38-130(i) has no parallel exemption. Thus, Bill 17-400 would allow the prosecution of non-residents driving through Denver, while lawfully possessing magazines for hunting or self-defense. Colorado statewide law allows a rifle hunter to take a magazine of any size into the field. If the hunter is pursuing small game, there is no limit for how many rounds may be in the rifle. For big game hunting, the rifle cannot be loaded with more than 6 rounds. See Colorado Parks & Wildlife, *2017 Colorado Small Game & Waterfowl*, pp. 4-5, <http://cpw.state.co.us/Documents/RulesRegs/Brochure/SmallGameWaterfowl.pdf>; Colorado Parks & Wildlife, *2017 Colorado Big Game*, p. 16, <http://cpw.state.co.us/Documents/RulesRegs/Brochure/BigGame/biggame.pdf>. So under state

law, a person legally in possession of a 20 round rifle magazine may hunt with that magazine, yet Bill 17-400 would criminalize such a person who drives through Denver on the way to a hunting trip. This is contrary to the state preemption statute.

To defend against the inevitable preemption lawsuit, the Denver City Attorney would have to argue that the state automobile preemption statute only applies to firearms, and that magazines are not firearms. This would be an uphill argument. The statute refers to “a weapon,” not solely to firearms. Moreover, Bill 17-400 amends Denver’s “assault weapons” ordinance, which of course is only about “weapons.”

As you know, the legal issues of state preemption vs. home rule are complex, and it is not always easy to predict how a court would rule. However, the Bill 17-400 would be cleaner, and less vulnerable to a legal challenge if it either:

1. Simply omitted the magazine issue, since the state statute already provides Denver prosecutors with sufficient tools for magazine prosecutions, OR
2. Included grandfathering language for all magazines possessed before the bill’s effective date, and also included exemptions for licensed carry pursuant to state statute, and for automobile carry pursuant to state statute.

Thank you for your consideration.

Sincerely,
David B. Kopel
Research Director
Independence Institute

From: [K Emerson](#)
To: [dencc - City Council](#)
Subject: Bump Stock / Magazine Bill 17-1400
Date: Tuesday, January 09, 2018 9:10:43 AM

Please delete the proposed magazine limitation wording changes to the “bump stock” bill, Council Bill no. 17-1400.

<!--[if !supportLists]-->1. <!--[endif]-->The changes proposed to lower the magazine capacity limit from 20 to 15 rounds are unnecessary as violators can be prosecuted under state law.

<!--[if !supportLineBreakNewLine]-->
<!--[endif]-->

<!--[if !supportLists]-->2. <!--[endif]-->Although the bill states that a small part of its purpose is to update Denver’s regulations to meet recent state law, changes given in the proposed wording differ from state law in a number of significant respects. Three examples:

<!--[if !supportLists]-->a. <!--[endif]-->The Denver proposal limits shotgun magazines to 6 shells while state law limits such magazines to 8 (Colorado Criminal Code 18-12-301 (2)(a) (III)).

<!--[if !supportLists]-->b. <!--[endif]-->There is no “grandfather clause” for older magazines (18-12-302 (2)(a)).

<!--[if !supportLists]-->c. <!--[endif]-->The Denver bill lacks the progressive sentencing guidelines given in the magazine requirements of the state’s criminal code (18-12-302 (1)).
<!--[if !supportLineBreakNewLine]-->
<!--[endif]-->

3. <!--[endif]-->Passing the magazine requirements shown in this “bump stock” bill will make instant criminals out of an unknown number of law-abiding Denver voters.

Thank you for consideration of this comment.

Sincerely,

Keith Emerson

7840 E Bethany Pl

Denver

From: [Cameron Emerson](#)
To: [dence - City Council](#)
Subject: Council Bill 17-1400 Input
Date: Saturday, January 06, 2018 6:19:10 PM

My name is Cameron Emerson, and I have resided in Denver since I was born. I am a gun owner, and would like to weigh in on the council bill 17-1400 prior to final implementation.

First, I would like to say that I am for removing bump-stocks from sale. Automatic weapons have been banned for many years, and a bump stock is a legal loophole that should never have existed in the first place.

However, with regards to magazine size, I understand that the update from 21 round to 15 round is desired to comply with state law, though I am personally against this decrease. That said, the biggest issue is that the law as written now makes no provision for current owners of magazines over 15 rounds. As written now, there is no provision for grandfathering in the existing magazines (non-transferable, I should add, they cannot be sold, passed down, or anything under Colorado level law), nor do I see any proposition to buy back or otherwise proactively allow Denver residents to exchange their magazines. Please, some action must be taken to allow gun owners that legally own magazines or weapons with greater than 15 round capacities right now to either keep what they have or inform and incentivize them to remove their soon to be illegal possessions.

I will be watching the passage of this bill closely, now that I know of its existence.

Thank you,
Cameron Emerson

From: [K Emerson](#)
To: [dencc - City Council](#)
Subject: Council Bill No 17-400 Modifications to Ordinance 17-1400
Date: Wednesday, January 03, 2018 5:59:39 PM

I just sent comments to my council-person, Kendra Black, regarding the proposed modifications to the assault weapons bill and I would appreciate your forwarding those comments (shown below) to the chair of the council.

My reading of the proposal was based on the following link:

[Denver councilman proposes ban on bump stocks for semiautomatic guns in response to Las Vegas massacre](#)



Thank you,
Keith Emerson
7840 E. Bethany Pl
Denver, CO 80231

"The changes proposed for the magazine portion of the law cause it to exceed state law and the magazine parts of the current law should remain in place.

1. There is no "grandfathering" of magazines as was done in state law. Mere possession of a currently legal old 20 round magazine would be breaking the revised law.
2. "semiautomatic weapons...with a capacity of more than 15 rounds available" means that since one round can be in the chamber the effective magazine limit is only 14, not 15."

From: [K Emerson](#)
To: [dencc - City Council](#)
Subject: Re: Bump Stock / Magazines Bill 17-1400
Date: Saturday, January 06, 2018 5:11:02 PM

Re-send with the correct bill number. The page / line references are based on the 1/3/2018 version of the bill. Keith Emerson

On Saturday, January 6, 2018, 4:24:35 PM MST, K Emerson <kemerson2002@yahoo.com> wrote:

Please include an amendment to Council Bill 17-1400 that would align one important element of the proposed magazine restrictions with State requirements, specifically the “grandfather clause” provision.

During the last subcommittee hearing of Council Bill 17-1400, members were told that the proposed magazine related changes brought Denver into line with state law. One clause, important to many Denver residents, was not included. Specifically, Colorado Revised Statutes section 18-12-302 (2) (a). This is a clause grandfathering in certain magazines for the owners in possession as of them as of July 1, 2013.

Without the grandfather clause, those now in possession of Denver-legal magazines from 16 through 20 round capacity as of 2013 will be in violation of the proposed Denver bill when it passes into law. These currently legal magazines now in the possession of many Denver residents cannot, by State law, be transferred to another person. These older and currently legal magazines are now in possession of many Denver residents because they have been legal for years. Therefor the inclusion of such an amendment does no harm and will prevent many Denver residents from becoming inadvertent criminals.

An easy way to include the grandfather clause would be to reference or directly copy the State code. If a clause is to be written into the bill it might be similar to this:

Page 2 line 7 - Section 1 (1) (a): All semiautomatic action, centerfire rifles with a detachable magazine with a capacity of more than fifteen (15) rounds ***except semiautomatic action, centerfire rifles equipped with magazines owned on July 1, 2013.***

Page 2 line 15 - Section 1 (1) e: Any part of combination of parts designed or intended to convert a firearm into an assault weapon, including a detachable magazine with a capacity of more than fifteen (15) rounds, ***except those magazines owned on July 1, 2013,*** or any combination of parts.....

Page 4 line 16 - Section 3 (i): Specific magazine prohibited. It shall be unlawful to carry store or otherwise possess a magazine which will hold or

may be modified to hold more than fifteen (15) rounds, except that this subsection shall not apply to:

(new 3) Magazines in the possession of the owner on July 1, 2013 and holding less than 21 rounds. (following sections will have to be re-numbered)

Thank you for your consideration of this change.

Sincerely,

Keith Emerson

7840 East Bethany Place

Denver

Kemerson2002@yahoo.com

From: [Stacy W. Decker](#)
To: [Susman, Mary Beth - CC Member Denver City Cncl](#); [dence - City Council](#); [Palmisano, Lucas W. - CC City Council District 05](#)
Subject: Agenda item : 17-1400 - Bump Stock and Magazine Limit ordinance
Date: Monday, January 22, 2018 10:03:41 AM

Hi Again,

I am for the limits with an amendment to the text. We do need to have the grandfather clause for existing magazines placed into the wording of the ordinance text. I recommend the same date that is on the State Bill of July 1 2013.

My feeling is that if we amend the text now we will be saving the city a lot of money when this ordinance taken to court. I feel certain that as the ordinance currently stands someone will bring a lawsuit against it and then the whole ordinance will be held up in court and then ultimately the city will lose and we will have to start all over again.

I'd rather we spend a few minutes adjusting the wording now to match the state wording and let the lawyers fight over something else.

Thanks,
Stacy
80220

From: [Nicholas Tiedemann](#)
To: [dencc - City Council](#)
Subject: Proposed amendments to bill 17-1400
Date: Monday, January 22, 2018 4:11:49 PM

Dear Denver City Council,

As a homeowner and sportsman in southwest Denver, I believe bill 17-1400, as written, will criminalize a large number of people who acted on good faith to follow the law prior to July 1, 2013.

A few points of note on this subject:

- The majority of full size 9mm handguns, commonly used for self-defense and recreation, ship with factory magazines between 15 and 18 rounds.
- Magazines with restricted capacity are at least as expensive as standard magazines.
- Most gun owners have between two and ten magazines for each firearm. This is because magazines are wear items subject to damage, whose proper function is critical to proper function of the firearm.
- Most magazines cost between \$20 and \$60, not \$10 as was discussed in prior meetings.

For example, if a person has 4 firearms, each with 4 magazines, with an average cost of \$30 to replace each magazine, this act will incur a total cost of \$480. For those with more guns, more magazines, or exotic firearms with more expensive magazines, this cost could easily reach over \$1000. The time and effort necessary to source the compliant magazines could be significant as well, especially considering less popular models of firearm. In some cases, lack of compliant magazines may effectively ban the entire firearm.

The numbers of magazines with capacities between 15 and 20 rounds in legal, pre-2013 possession by Denver residents may be higher than acknowledged. Many people, anticipating the state ban, pre-emptively purchased firearms and magazines with standard factory capacity between 16 and 20 rounds prior to July 1, 2013. Again, magazine capacities between 15 and 18 rounds are the norm for many mainstream firearms.

Furthermore, the following points are worth considering:

- Most guns sold with standard magazines of sizes between 16 and 20 rounds do not offer 15 round magazines. This effectively limits magazine size in those guns to 10 rounds, the commonly available restricted size.
- For those with weapons of newly restricted capacity, and especially for those effectively limited to 10 rounds, it creates an impetus to migrate to a weapon of a larger & more powerful cartridge and lower capacity. This could result in a zero-sum situation for public safety, yet still incur costs on law-abiding individuals.

The testimony of those in favor of the hard 15 round limit is compelling; the tragedies committed have been truly heartbreaking. It is difficult to express dissent without acknowledging the pain felt when someone innocent loses their life, and we all wish to see our community remain a safe place to live. Still, I urge you to please consider the imposition this makes on law-abiding residents who desire to legally and responsibly defend their households and loved ones. Councilman Flynn's amendment to allow grandfathering is a step in the right direction, but the provision that the magazines cannot leave the owner's dwelling would prevent sale of the non-compliant magazines out-of-state. This provision would further incur financial burden.

A reasonable amendment should include:

1. Removing the redundant magazine restriction entirely, deferring to Colorado's existing 15-round restriction; or
2. Grandfathering magazines between 16 and 20 rounds with no additional restrictions; or
3. Allowing a reasonable time period for the out-of-state sale of existing non-compliant magazines; and
4. Allowing passage of nonresidents carrying magazines with a capacity greater than 15 rounds through Denver

Regarding the bump stock ban, I completely agree with the testimony and the general consensus of the council.

Thank you for your time,

Nicholas Tiedemann