

March 15, 2013

The Honorable John Hickenlooper
136 State Capitol
Denver, CO 80203

Re: Colorado House Bill 13-1224

Governor Hickenlooper:

On behalf of our client, Magpul Industries, Holland & Hart LLP urges your veto of Colorado House Bill 13-1224 based on legal and enforcement deficiencies set forth in this letter.

As you know, Magpul strongly opposes HB 1224. In public testimony, as well as in a meeting with you and your staff, Magpul communicated its position that HB 1224 will not enhance public safety, will restrict law-abiding citizens from defending their homes and families, will cause hundreds of jobs to leave Colorado, and will pull millions of dollars from the state economy. Magpul believes that this law should be vetoed on policy grounds alone, but understands that you disagree with its position.

Beyond the public policy deliberations related to HB 1224, there are significant legal defects and enforcement issues surrounding HB 1224. These issues were not resolved through the legislative process and, under the state constitution, it is the responsibility of the Governor, “who shall take care that the laws be faithfully executed,” to address the significant legal defects of HB 1224. (Colorado Constitution Article IV, Section 2).

Our legal analysis concludes that HB 1224:

- 1) **HB 1224 restricts the sale, possession, inheritance, and transfer of all firearm magazines rendering the bill unconstitutionally vague;**
- 2) **HB 1224 bans the possession, sale and transfer of certain existing firearms;** and
- 3) **HB 1224 will be virtually impossible to implement and enforce.**

Given these structural flaws, which are detailed below, Magpul respectfully asks that you veto HB 1224.

I. HB-1224, As Written, Bans All Magazines

While it may not have been the intent of the bill drafters, the plain meaning of HB 1224 is that it will prohibit almost every ammunition magazine as of July 1, 2013. The bill defines restricted magazines as any that are “designed to be readily converted” to accept more than fifteen rounds. The simple fact is that virtually every magazine on the market has an open floor plate, and that design makes every magazine readily convertible.

- A. Magazine Design** - Virtually every ammunition magazine that is commercially available has a removable floor plate. This design feature is necessary for cleaning, maintenance, and ease of manufacturing assembly. This *design* also inherently creates the possibility that all magazines can be extended through commercially available extension products or readily fabricated extensions. As a result, nearly every magazine can be converted to exceed the capacity limit set by HB 1224, including those for many bolt action hunting rifles and common handguns.
- B. Standard Extensions** - A basic product search via the internet demonstrates that virtually every magazine-fed firearm on the market has one or more commercially available extensions. These extensions are offered by the firearm manufacturer and by many aftermarket suppliers. In fact, the most popular home defense firearms come with an option to add an OEM magazine capacity extension, demonstrating that they are “designed to be readily converted.” The bill’s sponsor, Rhonda Fields, conceded in an interview with 9News that the extension issue was not considered while drafting the bill.
- C. Shotgun Shell Amendment** - HB 1224 in its earlier form prohibited the sale and possession of any device “capable of accepting more than 8 shotgun shells.” The Colorado Senate acknowledged that this provision created a legal conflict because every shotgun, by its inherent design, includes an ammunition source tube that can be expanded through commercially available extensions. To address this conflict, the Senate adopted an amendment on second reading that simply prohibits shotgun shell tubes that extend beyond a specific length. HB 1224’s magazine capacity restriction contains the identical conflict, but was not addressed by amendment.
- D. Unconstitutionally Vague** - HB 1224, as written, will require persons located in Colorado to determine whether a firearm magazine they are about to possess, sell, or transfer “is designed to be readily converted.” This criminal standard would require a person located in Colorado to predict the *intent* of the manufacturer’s design of that magazine: if the manufacturer *intended* to design the magazine to

be readily converted, it would be illegal to sell, possess, or transfer that magazine in Colorado; if, however, the manufacturer did not *intend* to design the magazine to be readily converted, it would be legal to sell, possess, or transfer that same magazine. Requiring individuals to predict a designer's intent to determine criminal culpability is unconstitutionally vague under the Colorado Constitution. The Colorado Supreme Court has established "[w]hen a statute is challenged as void for vagueness, the essential inquiry is whether the statute describes the forbidden conduct in terms so vague that persons of common intelligence cannot readily understand its meaning and application."¹ A person of common intelligence cannot determine whether a magazine is designed to be readily converted.

- E. Inconsistent Interpretation** – A problem closely related to the vagueness issue is the near certainty of inconsistent interpretations by law enforcement and those with responsibility to enforce the law and prosecute violations. Some officials will read the bill literally and make their own determination what magazines are designed to be readily converted.

II. HB 1224 Bans and Requires Confiscation of Certain Firearms

Regardless of the intent of legislative drafters, HB 1224 makes it illegal to purchase, inherit, or even possess existing firearms that have an internal ammunition source over 15 rounds other than .22 caliber or lever action firearms. This includes several popular firearm models, such as the Taurus 45 bolt action rifle which has an internal magazine capacity of sixteen .45 caliber rounds, and the SKS line of rifles which can have an internal ammunition source of 20 rounds. This category of firearm would be illegal to possess as of July 1, 2013, regardless of when it was obtained, because HB 1224 only "grandfathers" magazines over 15 rounds and not firearms that have an internal ammunition source over 15 rounds. If HB 1224 is signed into law, individuals who possess this type of firearm after July 1, 2013 would be guilty of a criminal offense.

- A. HB 1224 Bans Sale of Certain Firearms.** HB 1224 would ban the sale or transfer of all firearms (except .22's and lever actions) that have an internal ammunition capacity over 15 rounds. These firearms could not be obtained or brought into Colorado after July 1, 2013. Unlike similar laws in other states, HB 1224 does not contain an antique or vintage firearm exemption, so all firearms of this type are prohibited.

¹ *People v. Gross*, 830 P.2d 933, 937 (Colo. 1992).

- B. HB 1224 Bans Inheritance of Certain Firearms.** HB 1224 would ban the transfer of all firearms (except .22's and lever actions) that have an internal ammunition source over 15 rounds. As a result, individuals could not sell or trade these firearms after July 1, 2013. Individuals will not even be able to transfer these weapons to other family members as a gift or inheritance. Unlike other state laws, HB 1224 does not include an inheritance exemption. This means that a Colorado citizen cannot even pass this type of weapon down to his son or daughter, even if it is an antique or vintage firearm.
- C. HB 1224 Makes Existing Firearms Illegal to Possess.** HB 1224 bans all fixed ammunition sources over 15 rounds. The bill exempts .22 and lever actions that have fixed ammunition sources over 15 rounds. The bill also grandfather existing "magazines" over 15 rounds. However, HB 1224 does not grandfather firearms that have an internal ammunition source over 15 rounds that are not .22's or lever action. These firearms would be illegal to possess in the State of Colorado as of July 1, 2013, if HB 1224 is signed into law regardless of when the firearm was obtained. It would be a criminal offense to continue to possess these types of firearms even if an individual owned the firearm before HB 1224's enactment.

III. Implementation and Enforcement Virtually Impossible

In addition to the enforcement and interpretation issue discussed above, there are other serious flaws that will make HB 1224 virtually impossible to implement and enforce.

- A. Date Stamp** - The vast majority of firearm magazines do not contain a date stamp. Manufacturers outside of Colorado that are supplying an international market will not adjust manufacturing processes to meet Colorado HB 1224's requirements. The fact that firearm magazines do not contain markings to demonstrate production or sale dates makes HB 1224 virtually impossible to enforce for at least two reasons:
- 1. Grandfathering** - HB 1224 "grandfathers" prohibited magazines located in Colorado before the bill's effective date. Without date stamps on magazines, it will be impossible to determine which firearm magazines were located in the State of Colorado before the bill's effective date. In fact, the National Institute for Justice recently issued a memo that concluded magazine bans are ineffective if they contain grandfathering provisions:

"In order to have an impact, large capacity magazine regulation needs to sharply curtail their availability to

include restrictions on importation, manufacture, sale, and possession. An exemption for previously owned magazines would nearly eliminate any impact. The program would need to be coupled with an extensive buyback of existing large capacity magazines. With an exemption the impact of the restrictions would only be felt when the magazines degrade or when they no longer are compatible with guns in circulation. This would take decades to realize.”²

2. **General Availability** - Any individual could legally purchase a “Large Capacity Magazine” in another state, including each of Colorado’s neighboring states, bring the magazine back to Colorado, and there would be virtually no way for law enforcement to prove that the magazine was not purchased or transferred before the effective date of HB 1224.

- B. Law Enforcement** - HB 1224 places impossible enforcement decisions on Colorado law enforcement. To effectively enforce HB 1224, Colorado law enforcement would need to be able to determine: 1) whether a magazine is “designed to be readily converted;” 2) whether a magazine was in existence prior to the ban; and 3) whether a magazine had been in continuous possession since the enactment of the ban. This information is not available to law enforcement because it does not exist, making HB 1224 impossible to enforce.

Based on the facts and analysis set forth above, HB 1224 bans a broader class of firearms and firearm accessories than the bill sponsors intended. **HB 1224, as written, would be one of the most expansive gun bills implemented in the United States.** Based on these facts, along with the significant legal and enforcement defects, Magpul urges you to veto House Bill 1224.

Sincerely,



Jonathan M. Anderson