

2015 HOUSE JUDICIARY

HB 1219

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1219
2/4/2015
23212

Subcommittee

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to weapons.

Minutes:

Testimony 1, 2,

Chairman K. Koppelman: Opened the hearing.

Rep. Porter: Introduced the bill. This is just clean up language. Sections 1 & 2 are changing how a person can bear arms and how they can get their permit back. I have met with the AG and his staff and we think we can change those sections to work for the individual and the process. Went through the bill. (3:38- 6:48) The NRA helps us with the writing of this bill.

Rep. Lois Delmore: Is your intent whether the felony is in state or out of state the same process should be followed?

Rep. Porter: I think that is the way it is now. The purpose of this bill is to send the person back to the court that had jurisdiction over the sentencing of the individual. I can understand where that would be important in some cases because there maybe circumstances that particular judge knew about. It shouldn't be a huge issue to have the district judge talk to that judge nor have the record sent to make sure the person applying to have that right restored and then the ability to have concealed weapons permit so they can review the case.

Rep. Lois Delmore: In case of domestic violence we would need to make sure we follow the requirements because I think funding would also be lost to the state. Am I correct?

Rep. Porter: Those are of particular importance. If it is a crime of domestic violence there is an extra flag that put on those crimes.

Rep. K. Wallman: You said this bill was a fix and it would make the process easier for convicted felons to get their firearms back? Is that why you feel we need this bill?

Rep. Porter: No the process is very stringent. It just moves it back to the jurisdiction where the crime was committed so it makes it easier for the process to work. That is the easy part.

Rep. Kretschmar: Section 1 of the bill in 1 a there is a period of ten years; and then in 1b it is five years; is that the current law I guess.

Rep. Porter: 1 is dealing with just felonies? I will let the AG address that.

Rep. Kretschmar: He can get the gun back after ten years. It is the tenure of your bill that he can go to court before the ten years and get it back.

Rep. Porter: The petitioning process is already in place in law. I believe it is the period on the felony side it is ten years.

Rep. Kretschmar: So it is not automatic if the ten years expire that the person can get the gun back. He has to still petition the court?

Rep. Porter: I believe it is automatic; you have the right to bear arms after ten years This is specifically dealing with a concealed weapons permit. They are two different things.

Chairman K. Koppelman: If you committed a crime in another state you have to go back to that state. That is the change.

Rep. Porter: That is exactly what the letter that I emailed you from the NRA has to deal with. Under the bill then they would have to go back to the where the crime was committed. On the other side of that there is a federal process as was explained in the email that in the existing language they allowed the individual to use our court system since they were now residence here and in the world of technology that the information can flow back and forth between the courts that it was a much cleaner process if they are a resident of ND to allow them that ability to go to our court.

Chairman K. Koppelman: Section 4, page 4, line 7 it talks about appealing it would have to happen 180 days after the of the denial. What happens if they wait longer?

Rep. Porter: They would have to file a new application and go through the process again. The main component is to be able to tell them what the appeal denial was.

Vice Chairman Karls: Describe Class 3?

Rep. Porter: It is a federal firearm license that is required to sell silencers, fully automatic weapons and short barreled rifles. There is a whole another process for an individual to come into the area. This process that is written in the law for an individual and buy that item and legally possess it and you have to go through another vigorous background check and application process and finger prints and a picture and send that in to the Feds and they send you back a tax stamp after your \$200 fee and then you can possess those items. This process that is written in the law is a level above what they are required to do as a

licensed Class 3 federal fire arms dealer. They are still tracked through the federal process.

Rep. G. Paur: In Section 4 you said that the director of the Bureau of Criminal Investigation may disclose to the applicant that that section allows them to disclose the reason for the denial. They are not allowed to now?

Rep. Porter: They do not feel under the current law that they can.

Rep. G. Paur: Is there some reason you have must in there?

Rep. Porter: That is the way it came.

Phil Pfenning, Chief Agent, BD Bureau of Criminal Investigation, Office of Attorney General: (See testimony #1) (21:00-26:15)

Rep. L. Klemin: In Section 1 a and b it says the ten year and five year prohibitions apply only to ND convictions and for someone who has been convicted in another state regardless of how long ago or under federal law it is permanent. Is that correct?

Phil Pfenning: The individual would have to return to their court of jurisdiction where the prohibition was initially given to them from their conviction.

Rep. L. Klemin: If they don't go back to New York if they lived in ND for 50 years then it is permanent?

Phil Pfenning: Each state has a different process on who would get their rights back.

Rep. L. Klemin: As I read this it only applies to the state of ND. It is permanent unless you go back to the other state or to the federal government if they have such a methodology to allow firearm licensing. Unless they do something in another state it is permanent in ND.

Phil Pfenning: Yes that would be correct.

Rep. L. Klemin: What gives the state of New York jurisdiction over a person who has been a resident of ND for many years?

Phil Pfenning: It has to do with the conviction of the crime that occurred in their state.

Rep. L. Klemin: Of which their crime has been completed. I don't understand in section 2 of this bill how we could control the procedure followed in another state? Then a copy of that petition has to be filed in the county where they reside, but taking that language out means they would have to go back to a district court in the county where the offense occurred which would be a district or another kind of court and then a copy of the petition has to be served on the state attorney in the county where the petition is filed under the ND rules of civil procedure, but if it is New York they do not have the ND rules of civil procedure; they probably don't even have a state's attorney so the procedure doesn't quite

make sense here. How can we here in ND tell the court in New York that they have to follow the ND rule 5 of civil procedure?

Phil Pfenning: They would follow the court and jurisdiction where they were originally convicted in.

Rep. L. Klemin: A copy of the petition has to go someplace in New York and that district attorney has 20 days to file a written response to the petition that was filed in New York. We can't tell them what to do in New York.

Phil Pfenning: Yes

Rep. L. Klemin: Section 3: You are taking out subsection a and b and saying all of subsection 1 does not apply to this laundry list. That would include a person who has been diagnosed, or confined or committed in a hospital or other institution etc. as under c that person would now under the new section 2 b even if a person has a serious mental illness under this they would be allowed to have a firearm in their residence or fixed place of business.

Phil Pfenning: No that is a separate section of law that you are referring to; they are in two different sections of law.

Rep. L. Klemin: OK. Going to section 4 BCI may disclose the reason, but they don't have to if they don't want to.

Phil Pfenning: There are certain laws of other state or the federal government on how the information could be divulged to individuals so we would want to follow the other states laws or the federal government's laws as to how and when we can release this information.

Rep. L. Klemin: So you are going to have to know the laws of all 50 states and then say can I disclose under that state or not.

Phil Pfenning: That is the difficult part of how we have to release that information.

Rep. L. Klemin: If think this will make it very difficult for you to keep up with what is happening in all these other states too.

Phil Pfenning: That is true and accurate; however we do want to tell the applicants the reason for their denial or revelation in cases we are able to.

Rep. L. Klemin: This 180 day appeal is the longest one I have heard of.

Phil Pfenning: We wanted to give the applicant's the reasonable amount of time that is a benefit to them in these situations and circumstances.

Rep. G. Paur: Under Section 4 if we would change it to must disclose wouldn't the BCI or who ever be able to give them a reason we are denying this.

Phil Pfenning: That is the process we follow now. We are hoping to take that a step further and be able to tell them it was because of this crime or reason.

Rep. Lois Delmore: In other states are those records sometimes sealed? If we want the courts to look at them here to allow them to carry or whatever is that going to be another issue?

Phil Pfenning: That is the issue we deal with. Law enforcement and the courts do have access and to these records and we can see them; however there are certain circumstances where these records are prohibited from being divulged for specific reasons so that is the situation.

Rep. K. Wallman: Section 5 in your testimony it says the BCI is receiving copies of the federal forms for someone with an NFA licensing. Why do you receive them now? What would change on background checks and safety is a concern?

Phil Pfenning: We have been receiving them for some time. I think that section was put in sometime in the 80s. We don't currently use those forms for any reason so that is why we wanted this changed. These forms that we get serve no legitimate purpose for us. Because the federal government has their process they follow and they maintain those records and they keep track of these individuals; there isn't really a reason or purpose for us to do so.

Rep. K. Wallman: Do local law enforcement ever contact you and is there any use of this.

Phil Pfenning: No they don't.

Rep. L. Klemin: Does that apply to the defendant. They can't find out the reason why. Doesn't it violate due process?

Phil Pfenning: I think they would have the ability to release that under specific circumstances that they have within their law to the individual that it affects. Even in our own state there are some restrictions about how we release criminal history information.

Rep. L. Klemin: So if Joe Blow walks into your office you can give him that information. You are not going to tell him in writing what you tell him in the office. Then he has 180 days to appeal. If he appeals this he will say why, but there is nothing to show the court because you didn't give him a copy of it.

Phil Pfenning: The court would have access to that record as well.

Rep. L. Klemin: Now we are in court you are saying you are not going to tell him why, but if he appeals you give it to court and now the world knows.

Phil Pfenning: We would tell them why. If they appealed, it could be an open records issue unless the court would decide to seal it.

Rep. L. Klemin: Maybe you could find that.

Chairman K. Koppelman: Maybe we need to look at this further and maybe Mr. Trenbeath has some answers for us. I understand the concern. Page 2 on the top the first paragraph you say this section of law is currently being used by an individual to argue that ND has given its civil rights to own a firearm back even though he was convicted of a felony in the state of ND. That is a different section. Not the one Rep. Klemin was just asking about but the one we talked about earlier. If this individual arguing this in a New York setting? Or is he saying that here?

Phil Pfenning: He is saying that here.

Chairman K. Koppelman: If ND had done so under currently law isn't that true? If our courts in ND then he has the right to possess?

Phil Pfenning: In the state of ND that is accurate; however in federal law which is supreme that is inaccurate and he cannot still possess the firearm.

Chairman K. Koppelman: So you are saying there is a federal law that it says if anything happens in the other 49 states every other state has to send them back before it is cleared up?

Phil Pfenning: There are restrictions in code.

Chairman K. Koppelman: Maybe the AG can clear this up. In Section 4 it is a may, but when we put something in statue it stays there. Maybe we should change that to a must or shall. Maybe subject to restrictions on criminal record disclosure we could add or something likes that.

Paul Emerson, Ass't Attorney General: The federal prohibitory is found in 18 USC 922 subsection g in that list. Whether a person is allowed by ND they can be held under a federal law. A lot of people are prosecuted federally if they are picked up if they are picked up for other reasons if they possess a firearm and have a felony conviction. That is the statue.

Rep. L. Klemin: The situation where someone has been convicted in the state of New York that federal law that you are sitting here; that the person has to go back to the state of New York to get that released?

Paul Emerson: No. It just lists that prohibits you federally from possessing a firearm. If you are convicted of a felony or domestic violence those are a few of them listed on that statue.

Rep. L. Klemin: So the discussion we had with Mr. Pfenning doesn't apply.

Paul Emerson: I don't agree with that. We are mixing sections of the law that Sections 1 & 2 try to put ND in a position that if you have a conviction from another state the courts in

our state have no authority to overrule or make any changes on a conviction that occurred in another state or in federal court. Section 2 is kind of the lynch pin of section 1 & section 2 which would require you to go back to wherever you got that conviction from; the court there will have the record that this court wouldn't have and it also allows the prosecutor in that jurisdiction to contest your application to have your rights restored.

Rep. L. Klemin: You see my dilemma here. New York would have to follow our rules here.

Paul Emerson: No I don't see your dilemma. In 62.01.02 1.1 we are just telling the person you need to go back to the state where you got the conviction from to try and get your rights restored.

Rep. L. Klemin: You are saying this says you have to go back to the state where the offense occurred.

Paul Emerson: I disagree with that. It is saying as amended would say the only way you can get your firearm rights back in ND is if the offense occurred in ND and a ND court would have to follow the procedures listed in section 2; otherwise you have to go back to the state and follow whatever the procedures are there.

Chairman K. Koppelman: On lines 23 & 24 page 2, section 2 the bill strikes the language if the felony offense was committed in this state.

Paul Emerson: Perhaps the wording needs to be changed; if the conviction happens in ND. If the conviction happens somewhere else our court doesn't have the authority or the jurisdiction or the power to restore your rights from another jurisdiction. That is the intention.

Chairman K. Koppelman: Reading it as changed might be confusing so we need to change it.

Paul Emerson: If we take the strikes off on lines 23 & 24 that might clear it up.

Rep. Lois Delmore: We had a bill in transportation that tried to correction something where they had lost their license in another state with a DUI and the DOT can't give them a license here until they straighten out in the other state. Some of the stuff we can't change, correct?

Paul Emerson: Yes that is the point.

Rep. Mary Johnson: Where is it provided that ND doesn't have jurisdiction?

Paul Emerson: That is the way the law of juris prudence works.

Rep. Mary Johnson: Where is that written?

Paul Emerson: It is in case law.

Tom Trenbeath, Chief Deputy of the Attorney General: That is developed over case law over time.

Chairman K. Koppelman: We are struggling with what the federal law says if you have been convicted and cannot have a gun how can any state say that they can get their rights restored?

Tom Trenbeath: We are talking about concealed carry and they are state laws.

Rep. L. Klemin: We are not in ND telling New York what can be done so this issue about jurisdiction I think ND has jurisdiction over people in ND. I don't think you can just say that is the way it is.

Tom Trenbeath: I agree with you. This is a choice of this legislature to relieve the court system of this state of the necessity of researching the court systems records of another state for the purposes of deciding whether or not a person in this state has applied for a concealed carry permit.

Rep. K. Wallman: If I commit a felony in Ohio and I can't have a concealed weapons permit and I move to the oil patch for a job then I try to get my concealed weapons permit back; upon a background check it is determined I cannot because by federal law I have a felony conviction in Ohio this just says ND can honor that and say we are not going to give you that permit unless you go back to Ohio and follow their rules for getting that permit back; then you can come to ND and once we have satisfied that has been taken care of in your state where the felony took place you can have a concealed weapons permit here?

Tom Trenbeath: You have a good grasp of that except take the federal government out of it.

Chairman K. Koppelman: To state jurisdiction then, if the individual from New York is saying I have been granted my rights back by ND obviously there was a decision made and a background check made. If they got a permit anyway would that normally be denied?

Tom Trenbeath: We are dealing with concealed carry. If we were to grant the ability to conceal carry in this state without purging the taint of the other state we may jeopardize reciprocity not only with that state but by our practices with other states.

Chairman K. Koppelman: Is that true with Class 1 and Class 2?

Tom Trenbeath: Class 1's is a worry as committee may remember that Class 1 license was created specifically to address reciprocity issues. The Class 2 license is not something we seek out and we usually just reinstate use.

Rep. G. Paur: Do you know the federal restrictions on possessing a firearm for a for a convicted felon?

Paul Emerson: It is 18 USC 922 is the federal statute that lists the things that prohibits you from possessing a firearm under federal law.

Rep. G. Paur: How long are you prohibited?

Paul Emerson: Forever unless you have your rights restored.

Rep. G. Paur: So our concealed weapons requirements would be invalid; our five and ten year, but if they cannot possess a firearm they certainly can't carry one concealed?

Paul Emerson: Yes. If you have a prohibitory under federal law you would not be issued a permit.

Chairman K. Koppelman: We are deliberating over someone who has a felony conviction whether it is in this state or another state who is applying for a concealed carry permit. If federal law says you can't even possess a weapon it is a moot point.

Paul Emerson: Yes that is right. If they are prohibited federally then they cannot get a permit.

Chairman K. Koppelman: So the trigger for the federal prohibition to go away would be for that felony conviction to be removed. The purpose of this bill is that we are trying to direct where that would happen.

Rep. L. Klemin: I am having confusion because we keep talking about concealed weapons permits. Actually 62.01.02 does not refer to concealed weapons procedure. Section 3 has to do with handguns.

Paul Emerson: There is some confusion because of the overlap.

Rep. L. Klemin: Most of this bill is about the concealed carry statute which was in Section 4.

Paul Emerson: This law addresses issued whether you can possess a firearm or not and part of this bill also deals with concealed weapons.

Paul Hamers: Support: (See testimony #2) (1:13:18-1:20:02)

Rep. G. Paur: In Section 5 we have a person or should that be individual?

Chairman K. Koppelman: I am not sure? If we are just talking about individual maybe that should be changed.

Rep. K. Wallman: You said you might have concerned with Sections 1, 2, & 3. If a person is given back their rights to have a concealed carry permit in the state where the felony occurred; then comes back to ND and gets the permit and then goes back to the home state we might be in violation. Is that what your concern was?

Paul Hamers: If somebody comes to our state and they have a conviction that prohibits them from having a firearm in their home state and now they appeal under ND law; 1. I feel how we can give back something we didn't take. If we give them back their rights and then we issue them a concealed carry permit and their home state has reciprocity with us ND has just licensed somebody that the original state had determined should never own a firearm again and now they are carrying in their home state where the whole judiciary system assumed they had revoked that right.

Rep. K. Wallman: You testified on page 4 of the bill under section 5 the section that is being struck that would require these records to be kept. What kind of man power is required to keep all those records?

Paul Hamers: As those records are turned in we pay people to maintain those records and if you are researching these records as well as the sheriff so there is not enough hours to be doing what we are doing. It is being done on the federal level; that is the level that grants you the items in the first place.

Rep. K. Wallman: You are probably right if these are electronic records they are kept at the federal level and anybody can access them that way; why would we need to keep them and that makes sense to me.

Paul Hamers: Yes why are we being redundant?

Hearing closed.

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1219
2/11/2015
23680

- Subcommittee
 Conference Committee

Committee Clerk Signature

Carron Hart

Minutes:

Proposed amendment #1

Chairman K. Koppelman: Opened the meeting on HB 1219.

Tom Trenbeath, Chief Deputy Attorney General: (See proposed amendment #1) He went over the amendment.

Chairman K. Koppelman: On page 2, line 23 I am wondering if we are really saying we want to remove the overstrikes rather than inserting.

Tom Trenbeath: The only net benefit is we add the name of the state rather than just reference to.

Chairman K. Koppelman: I have seen this state quite a bit, so we will just note that with our intern. It was agreeable with Tom Trenbeath to take that as a removal of that overstrike. Page 4 line 6, I think we have to remove the word may and insert shall. Then the language would be the same. We need to consider that first part of that amendment first because giving them more time to appeal like 180 days is better than a shorter period of time. Let us take a look at the portion of the proposed amendment without that which was acceptable to Tom Trenbeath.

Tom Trenbeath: On page 2 of the bill, line 23 remove the over strike on the words if the felony offense was committed in this state and delete the comma and put in a period.

Rep. Hawken: Made a motion for this portion of the amendment--everything you see with the exception of that reference to 180 days.

Rep. Delmore: Seconded the motion.

Voice vote. Motion carries.

Chairman K. Koppelman: No one wanted to change 180 to 90. Rep. Karls has indicated she thought Rep. Porter was working on some proposed amendments as well.

Paul Emerson, Attorney General's Office : The third one that says page 2, line 25 actually makes a lot more sense if that language appears at line 30 at the end of the section. Basically that sentence says if you are trying to restore your rights from a conviction from somewhere else, you need to do it in that other place.

Chairman K. Koppelman Otherwise we would run into the issue that if that precedes the language on lines 27-30, you are telling another state's attorney what to do?

Paul Emerson: Correct.

Rep. Delmore: Moved that corrected amendment. (On page 2, language on line 25, rather than being inserted after the word occurred, it should be inserted after the word court on line 30)

Rep. Maragos: Seconded the motion.

Voice vote. Motion carries.

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1219
2/18/2015
24062

- Subcommittee
 Conference Committee

Committee Clerk Signature

Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to weapons.

Minutes:

Chairman K. Koppelman: Went over the proposed amendment changes done 2-11-15.

Rep. Klemin: I know they don't like the word shall. They would prefer must. Was there an exception there?

Chairman K. Koppelman: Must unless otherwise prohibited by law.

Rep. Klemin: As I recall, they said we wouldn't tell you in writing, but if you come to our office, we will tell you.

There was more discussion on the proposed amendment changes.

Rep. Lois Delmore: Page 2, line 21, an individual who is prohibited from possessing a firearm due to a conviction of a felony go to the end of their in state court in North Dakota may petition. I think that would read better.

Chairman K. Koppelman: I am wondering if in the state of North Dakota is even necessary, because it references a specific section of Century Code so the conviction would have to be in North Dakota.

Rep. Klemin: You certainly couldn't be convicted of this North Dakota statute in Wyoming.

Chairman K. Koppelman: Certainly. I think they were kind of doing overkill there. I think it is probably covered and we maybe don't even need that. Tessa, I would just ask that you look at that as a grammatical question with council and if the words in the state of North Dakota on page 2, line 21 are even necessary.

Rep. K. Wallman: The intent of this bill was to take away confusion. On page 2, line 23 it takes out everything referencing ND.

Chairman K. Koppelman: The amendment put some of that back.

Rep. D. Larson: Made a motion for a DO PASS AS AMENDED.

Rep. Delmore: Seconded the motion.

A roll call vote was taken. 13 Yeas, 0 Nays, 0 Absent.

Rep. Delmore: Will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1219

Page 2, line 21, after "conviction" insert ", in state court in North Dakota"

Page 2, line 23, after "rights." insert "If the felony offense was committed in North Dakota,"

Page 2, line ³⁰~~25~~, after "occurred." insert "Individuals seeking to restore these rights for convictions from other state or federal courts must do so in a court of jurisdiction of that conviction"

Page 4, line 6, after "investigation" insert "shall, unless otherwise prohibited by law"

Page 4, line 9, after "within" replace "one hundred eighty" with "ninety",

RENUMBER ACCORDINGLY

SK
2/18/15

February 18, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1219

Page 2, line 23, remove the overstrike over "~~If the felony offense was~~"

Page 2, line 24, remove the overstrike over "~~committed in this state, the~~"

Page 2, line 24, remove "The"

Page 2, line 30, after the period insert "Individuals seeking to restore these rights for convictions from another state or federal courts must do so in a court of jurisdiction of that conviction."

Page 4, line 6, replace "may" with "shall, unless otherwise prohibited by law,"

Renumber accordingly

Date: 2-14-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1219**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: Tom Trenbeath amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep Hawken Seconded By Rep Delmore

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

voice voted
voice carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-11-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1219**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment ^{#2}
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep. Delmore Seconded By Rep. Maragos

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Pg 2 line 25 after word court

Date: 2-18-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1219**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep. D. Larson Seconded By Rep. Delmore

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur	✓				

Total (Yes) 13 No 0

Absent _____

Floor Assignment Rep. Delmore

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1219: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1219 was placed on the Sixth order on the calendar.

Page 2, line 23, remove the overstrike over "~~If the felony offense was~~"

Page 2, line 24, remove the overstrike over "~~committed in this state, the~~"

Page 2, line 24, remove "The"

Page 2, line 30, after the period insert "Individuals seeking to restore these rights for convictions from another state or federal courts must do so in a court of jurisdiction of that conviction."

Page 4, line 6, replace "may" with "shall, unless otherwise prohibited by law."

Renumber accordingly

2015 SENATE ENERGY AND NATURAL RESOURCES

HB 1219

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

HB 1219
3/19/2015
25146

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate Oliver

Explanation or reason for introduction of bill/resolution:

Relating to weapons.

Minutes:

1 Attachment

Chairman Schaible called the committee back to order and opened the hearing on HB 1219. Representative Todd Porter was on hand to introduce the bill.

Representative Porter: District 34 in Mandan. This is a bill that I put in on behalf of the attorney general. Representative Porter then explained the changes in the bill.

Phil Pfenning: Chief Agent, North Dakota Bureau of Criminal Investigation. See attachment #1. (4:58-10:18)

Chairman Schaible: The exemptions that we can deal with are those in the state of North Dakota, correct?

Phil Pfenning: Yes.

Senator Triplett: We are talking about the clause of the United States Constitution that prevents us from doing that, correct?

Phil Pfenning: Yes.

Senator Triplett: Struck subdivisions A and B but didn't fix the reference to it, correct?

Phil Pfenning: The way that item number 2 go up above the area that is not written into the copy explaining that.

Sue Beehler: From Mandan, neutral testimony.

Senator Triplett: Having listened to the testimony I would suggest talking to the AG's office and they might be able to help.

Senator Murphy: I think we can answer her first questions. It is any weapon I believe.

See Beehler: I believe that it is not like a driver's license.

Senator Triplett: The reference was more jurisdictional and less expletory.

There was no further testimony and Chairman Schaible closed the public hearing on HB 1219

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

HB 1219
4/2/2015
25751

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate O'Neil

Explanation or reason for introduction of bill/resolution:

Relating to weapons.

Minutes:

Chairman Schaible opened the committee work on HB 1219.

Senator Armstrong made a motion to remove sections 4 and 5 with a second by Vice Chair Unruh.

Senator Armstrong: The reason for deleting these sections is that they are in HB 1241. If you go to section 4 in the bill the only language that is in the other bill is subsection 7 not subsection 8.

Chairman Schaible: We are striking section 4 subsection 8 that would not be in any other bill.

Senator Armstrong: The normal appellate rules apply.

Senator Triplett: I see that there is slightly different language in subsection 7, is there a reason for that?

Senator Armstrong: That is because I left it up to legislative council's drafting of it and we ended up changing it to different language.

There was no further discussion, roll was taken, and the motion passed on a 7-0-0. Senator Armstrong then made a motion for a do not pass as amended with a second by Vice Chair Unruh.

Senator Armstrong: There is some good stuff in here and what they are trying to accomplish but I think that the problem is in seeking clarity they are actually creating a situation where they restrict their rights; I do not think that is what the bill does. By adding the language the way it is written there is no federal regulation or someone who lived in Idaho until they were 20 and has lived in North Dakota for the last 30 years without any

crime and if they had a 30 year old crime in Idaho they would have to go back to Idaho to do this. Then you run into different states, their jurisdictional issues and it is important to see and just because they ask doesn't mean that they will get it. I do not think that the subcommittee is comfortable with restricting rights in the attempt of tightening up language. At the end of the day North Dakota courts are not eager to ask and this would take it away from people.

Senator Triplett: I heard something different from someone from BCI suggesting that the legal interpretation is in violation of the constitution. Having that language in there it can become a burden to the state. I am not comfortable with the do not pass motion. I prefer if we don't just dismiss what our busiest law enforcement agency suggests.

Senator Armstrong: That is the flip side to the coin. I am not comfortable with it and the vast majority of the cases will not give you your guns back on a federal level. The administrative burden is not worth holding up their restoration of those citizens' rights.

Senator Triplett: Was there consultation from BCI in making the do not pass motion?

Senator Armstrong: Yes.

Senator Murphy: I don't remember talking about this bill much.

Senator Armstrong: I know that the language was vetted extensively so that potential problems came to light.

Senator Triplett: I might be more comfortable if we waited until next week.

Senator Armstrong withdrew his motion for a do not pass and Vice Chair Unruh withdrew her second.

There was no more discussion on HB 1219 and Chairman Schaible closed the committee work.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

HB 1219
4/9/2015
25961

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katia Oliver

Explanation or reason for introduction of bill/resolution:

Relating to weapons.

Minutes:

Chairman Schaible called the committee to order and opened committee work on HB 1219.

Senator Armstrong: Section 5 is dealt with in another bill, section 4 is dealt with in another bill, and section 3 was the technical correction where they asked to strike subdivisions A and B in section 1 by not correcting. Right now there are only 2 sections in A and B; I spent a lot of time with the bill after we met last time, there are some unintended consequences to this and a lot of it deals with how we treat certain misdemeanors. Federal law has no prohibition on guns for misdemeanors provided that the state doesn't have a prohibition. When you have to restore your gun rights you need to go to the jurisdiction where the incident occurred. So you get into these quasi scenarios where you have nowhere to go. There is also some deals with expungement and pardoning and things of that nature, I think that they are creating certain classes of people who do not know where to go. The reason I bring this up is because I tried to work with the language but it needs to be more complete and I am not comfortable taking it out; the tribal/state interaction is the one that I can think of happening a lot in North Dakota. The federal government won't do the prohibition because North Dakota is going to say that you need to go to the jurisdiction in which you were convicted. For that, when you have those kind of quasi problems I would prefer the law stays the way it is and make it potentially worse.

Senator Armstrong made a motion for a do not pass on HB 1219 with a second by Vice Chair Unruh.

Senator Murphy: I am on the bill and the reason I got on it was that the Attorney General's office brought this and because of section 4 and that has been taken out.

There was no other discussion, roll was taken, the motion passed on a 6-0-1 count with Senator Armstrong carrying the bill to the floor.

April 9, 2015

*me
up
15
jone*

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1219

Page 1, line 2, after the first comma insert "and"

Page 1, line 2, remove ", subsections 7 and 8 of section"

Page 1, line 3, remove "62.1-04-03, and section 62.1-05-01"

Page 4, remove lines 3 through 31

Page 5, remove lines 1 and 2

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1219, as engrossed: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1219 was placed on the Sixth order on the calendar.

Page 1, line 2, after the first comma insert "and"

Page 1, line 2, remove ", subsections 7 and 8 of section"

Page 1, line 3, remove "62.1-04-03, and section 62.1-05-01"

Page 4, remove lines 3 through 31

Page 5, remove lines 1 and 2

Renumber accordingly

2015 TESTIMONY

HB 1219

#1
HB 1219
2-4-15

HOUSE BILL 1219 TESTIMONY
HOUSE JUDICIARY COMMITTEE
FEBRUARY 4TH, 2015
PRAIRIE ROOM

By Phil Pfennig, Chief Agent, ND Bureau of Criminal Investigation,
Office of Attorney General

Chairman Koppelman and members of the House Judiciary:

My name is Phil Pfennig. I am a Chief Agent for the North Dakota Bureau of Criminal Investigation. I supervise the BCI's agents in western North Dakota including the organized crime agent; our agent and administrative staff assigned to the ND POST (Peace Officer Standards and Training) Board; BCI's training section and the ND Concealed Weapon Licensing unit.

I come before you today to lend testimony to House Bill 1219. This bill intends to amend a few sections in N.D.C.C. 62.1.

Section 1 seeks to amend parts of 62.1-02-01 with regard to persons who are prohibited from possessing firearms. The code reads that if the person is convicted of a specific offense, they would be denied from possessing a firearm for a period of 5 or 10 years depending on the conviction (violent felony is 10 years after all sentencing is complete; non-violent felonies and violent misdemeanors are 5 years after all sentencing is complete). The law currently states that these periods of prohibition apply to anyone, even if the conviction occurred outside the state of North Dakota. The change would "resinstate" the right to

#1
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2-4-15

possess firearms after the period of prohibition ONLY for people convicted in North Dakota. The problem with the statute as it currently exists is that the state of North Dakota does not have the authority to reinstate the right to possess firearms in jurisdictions outside of North Dakota. (This section of law is currently being used by an individual to argue that North Dakota has given his civil rights to own a firearm back even though he was convicted of a felony by the state of New York). The periods of prohibition would continue for convictions occurring in this state. I would note that if the person had their disability removed by a court where the conviction occurred, they would be able to possess firearms in North Dakota.

Section 2 addresses the section of 62.1-02-01.1 dealing with the same issues discussed in section 1 above. This section would fix the confusion of which jurisdiction can restore the right to possess firearms. The law as currently written, leads a person to believe that they may petition the district court where they currently live (in North Dakota) to have their rights reinstated from a conviction of another state or from the federal government. This simply cannot happen. A North Dakota court does not have jurisdiction to return a person's civil rights taken away by a court of another state or of the federal government. The reverse is true also.

Section 3 seeks to clean up the language in 62.1-03-01 which pertains to open carry, making it clear as to whom the section does not apply. It was an oversight from the amendments last session.

Section 4 amends section 62.1-04-03 by allowing the director of BCI to disclose to the applicant the specific reason for a denial or revocation of their concealed weapon license. The reason for this to be permissive

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2-4-15

rather than mandatory is due to the laws pertaining to how criminal history record information can be released and the circumstances where the director is prohibited from releasing specifics.

Section 4 also amends section 62.1-04-03 to add a time limit an individual may appeal a revocation or denial of a concealed weapon license (180 days). Time limits for appeals are common throughout the Century Code. This would simply eliminate attempts to appeal a case that is several years old where documents may have been destroyed per law.

Section 5 seeks to remove a requirement that someone with an NFA firearm or the federally licensed dealer of such weapons (machine gun, short barreled rifle or shotgun, suppressors, explosives, etc) needs to send copies of this paperwork to the Sheriff and to the Chief of the Bureau of Criminal Investigation. Under current federal law, in order to obtain an NFA weapon, the applicant must complete an application and enclose fingerprints and a set of photographs and send this paperwork and attachments to the ATF where a background check is completed. Once this background check is complete, the sanctioned applicant receives approval in the form of a "tax stamp." This tax stamp is actually viewed as federal tax information and is confidential. The Bureau of Criminal Investigation has been receiving copies of these forms for several years and does not desire to continue to receive nor store these forms. To the best of my knowledge and memory, these forms have not aided BCI in any investigations. Removal of paragraph 2 in 62.1-05-01 would remove the requirement that these forms be sent to BCI. However, we feel it is prudent to keep paragraph 1 (requiring that for someone to possess an NFA weapon, they follow federal law) and paragraph 3 (giving a penalty to those that would illegally possess

#1
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2-4-15

an NFA firearm and the ability for law enforcement to dispose of the illegal firearm).

Mr. Chairman and members of the committee, this ends my testimony and I would stand for any questions that you may have.

#2
HB 1219
2-4-15

04 February 2015

Chairperson and Members,
House Judiciary Committee
64th Legislative Assembly
State of North Dakota

Good morning,

My name is Paul Hamers. Let me touch on a few high points of my background. Both my wife and I were born and raised in North Dakota. I am a retired paratrooper of the U.S. Army. I have earned a Master's Degree in Military History, a Bachelor's Degree in Social Sciences Education, a Minor in Business Administration, and an Associate's Degree in Electronic Communications Technology. I am the current Municipal Court Judge for the City of Napoleon, the Technology Coordinator for Napoleon Public Schools, the President of the Napoleon Education Association, and the Lay leader of the Salem United Methodist Church. I have an extensive background in teaching the moral, ethical, and practical use of force to military personal, law enforcement, and civilians. I am currently certified as a North Dakota Concealed Weapons Permit Test Administrator.

Let me state that I am in support of HB1219 if for no other reason than that it represents a clarification of rights granted in the State Constitution of North Dakota, (Article 1, section 1), but more importantly it will clarify and correct ambiguities in firearms related portions of the Century Code. This will assist citizens with understanding and compliance with the law.

As written I find no issues with the clarifications represented by Sections 1, 2 and 3 of HB1219. My personal reason for appearing in support of this bill lies in Sections 4 and 5.

Section 4 of HB1219: Subsection 7: *The director of the bureau of criminal investigation may disclose to the applicant the specific reason for denial or revocation of the license.*

Denials due to "material misstatement" are generally committed through omission of prior offenses.

Since I have been a certified North Dakota Concealed Weapons Permit Test Administrator, I personally know of two instances where citizens were denied permits under the category of "material misstatement". In one case the applicant had the local sheriff perform a records check. Every record entry was listed on the application. After attempting to get this denial clarified, no one would disclose the offending omission.

The sheriff called in a favor and was able to ascertain the nature of the record entry that was omitted. In this case the individual had been placed in custody with a large group of people due to a parking lot incident at a bar after hours. The group slept off their drinking binge and was released in the morning before breakfast with "all charges dropped". The material misstatement was caused by the existence of the fingerprint card generated by this incident. The individual instantly remembered the incident. In the next example the individual was a city council member and again did not have any idea why the denial was based on the "material misstatement" category. After several attempts at correspondence this individual was granted a hearing in accordance with the appeal process. As reported by the

HB1219
2-4-15

individual; only at the persistent instance of the presiding judge was the basis for a "material misstatement" disclosed. The individual immediately remembered that he had forgotten to list a NSF check writing offense that had occurred 30 years prior. His comment was why didn't you just tell me this 3 months ago. "I would not have appealed."

I understand and appreciate the great need for privacy when it comes to records checks and names of people that possess concealed weapons permits, but I have always thought that reasons for "material misstatement" denials should be disclosed to the applicant. Section 4 Subsection 7 of HB1219 allows for the BCI to legally disclose reasons for denial.

Section 5 of HB1219: Omitting the need to forward records concerning the transfer of NFA controlled items to local and state agencies makes sense. Why duplicate the paperwork and tracking of highly controlled items that are already licensed at the federal level. Law enforcement entities can put resources to more efficient usage on more pressing matters.

In closing, Chairperson and Members, I thank you for this opportunity to weigh in on HB1219. Feel free to contact me for further commentary at your convenience.

Sincerely,



Paul Hamers
USA Retired
Owner
RICOCHET GUN WORKS
701-400-0085
ricochetgunworks@gmail.com

1
HB 1219
2-11-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1219

Page 2, line 21, after "conviction" insert ", in state court in North Dakota"

Page 2, line 23, after "rights." insert "If the felony offense was committed in North Dakota,"

Page 2, line ³⁰25, after "occurred." insert "Individuals seeking to restore these rights for convictions from other state or federal courts must do so in a court of jurisdiction of that conviction"

Page 4, line 6, after "investigation" insert "shall, unless otherwise prohibited by law"

Page 4, line 9, after "within" replace "one hundred eighty" with "ninety",

RENUMBER ACCORDINGLY

Introduced by

Representatives Porter, Delmore, Karls

Senators Carlisle, Hogue, Murphy

1 A BILL for an Act to amend and reenact subsection 1 of section 62.1-02-01, subsection 1 of
2 section 62.1-02-01.1, subsection 2 of section 62.1-03-01, subsections 7 and 8 of section
3 62.1-04-03, and section 62.1-05-01 of the North Dakota Century Code, relating to weapons.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 62.1-02-01 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 1. a. A person who has been convicted anywhere of a felony offense involving
8 violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an
9 equivalent felony offense of another state or the federal government is prohibited
10 from owning a firearm or having one in possession or under control ~~from~~. If the
11 conviction occurred in this state, the prohibition is effective beginning on the date
12 of conviction and ~~continuing~~ continues for a period of ten years after the date of
13 conviction or the date of release from incarceration, parole, or probation,
14 whichever is latest.
- 15 b. A person who has been convicted anywhere of a felony offense of this or another
16 state or the federal government not provided for in subdivision a or who has been
17 convicted of a class A misdemeanor offense involving violence or intimidation in
18 violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another
19 state or the federal government and the offense was committed while using or
20 possessing a firearm, a dangerous weapon, or, as defined in subsections 7 and 8
21 of section 12.1-01-04, a destructive device or an explosive, is prohibited from
22 owning a firearm or having one in possession or under control ~~from~~. If the
23 conviction occurred in this state, the prohibition is effective beginning on the date
24 of conviction and ~~continuing~~ continues for a period of five years after the date of

- 1 conviction or the date of release from incarceration, parole, or probation,
2 whichever is latest.
- 3 c. A person who is or has ever been diagnosed and confined or committed to a
4 hospital or other institution in this state or elsewhere by a court of competent
5 jurisdiction, other than a person who has had the petition that provided the basis
6 for the diagnosis, confinement, or commitment dismissed under section
7 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another
8 jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or
9 as a mentally deficient person as defined in section 25-01-01, is prohibited from
10 purchasing a firearm or having one in possession or under control. This limitation
11 does not apply to a person who has not suffered from the disability for the
12 previous three years or who has successfully petitioned for relief under section
13 62.1-02-01.2.
- 14 d. A person under the age of eighteen years may not possess a handgun except
15 that such a person, while under the direct supervision of an adult, may possess a
16 handgun for the purposes of firearm safety training, target shooting, or hunting.
17 A person who violates subdivision a or b is guilty of a class C felony, and a person who
18 violates subdivision c or d is guilty of a class A misdemeanor.

19 **SECTION 2. AMENDMENT.** Subsection 1 of section 62.1-02-01.1 of the North Dakota
20 Century Code is amended and reenacted as follows:

- 21 1. An individual who is prohibited from possessing a firearm due to a conviction of a
22 felony under subdivision b of subsection 1 of section 62.1-02-01 may petition the
23 district court for restoration of the individual's firearm rights. *in state court in North Dakota,*
24 committed in this state, the *if the felony offense was committed in North Dakota.* The petition must be filed with the district court in the
25 county where the offense occurred. *Individuals seeking to restore these rights for convictions* If the offense was a felony of another state or the
26 federal government, the petition must be filed with the district court in the county
27 where the petitioner resides. A copy of the petition must be served on the state's
28 attorney's office in the county where the petition is filed in accordance with Rule 5 of
29 the North Dakota Rules of Civil Procedure. The state's attorney's office shall have
30 twenty days to file a written response to the petition with the district court.

mother states on federal courts must do so in accord of jurisdiction of that conviction

1 **SECTION 3. AMENDMENT.** Subsection 2 of section 62.1-03-01 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 2. The restrictions provided in ~~subdivisions a and b~~ of subsection 1 do not apply to:
- 4 a. An individual possessing a valid concealed weapons license from this state or
5 who has reciprocity under section 62.1-04-03.1.
 - 6 b. An individual on that person's land, or in that individual's permanent or temporary
7 residence, or fixed place of business.
 - 8 c. An individual while lawfully engaged in target shooting.
 - 9 d. An individual while in the field engaging in the lawful pursuit of hunting or
10 trapping. However, nothing in this exception authorizes the carrying of a loaded
11 handgun in a motor vehicle.
 - 12 e. An individual permitted by law to possess a firearm while carrying the handgun
13 unloaded and in a secure wrapper from the place of purchase to that person's
14 home or place of business, or to a place of repair or back from those locations.
 - 15 f. Any North Dakota law enforcement officer.
 - 16 g. Any law enforcement officer of any other state or political subdivision of another
17 state if on official duty within this state.
 - 18 h. Any armed security guard or investigator as authorized by law when on duty or
19 going to or from duty.
 - 20 i. Any member of the armed forces of the United States when on duty or going to or
21 from duty and when carrying the handgun issued to the member.
 - 22 j. Any member of the national guard, organized reserves, state defense forces, or
23 state guard organizations, when on duty or going to or from duty and when
24 carrying the handgun issued to the member by the organization.
 - 25 k. Any officer or employee of the United States duly authorized to carry a handgun.
 - 26 l. An individual engaged in manufacturing, repairing, or dealing in handguns or the
27 agent or representative of that individual possessing, using, or carrying a
28 handgun in the usual or ordinary course of the business.
 - 29 m. Any common carrier, but only when carrying the handgun as part of the cargo in
30 the usual cargo carrying portion of the vehicle.

1 **SECTION 4. AMENDMENT.** Subsections 7 and 8 of section 62.1-04-03 of the North Dakota
2 Century Code are amended and reenacted as follows:

3 7. The director of the bureau of criminal investigation may deny an application or revoke
4 or cancel a license after it has been granted for any material misstatement by an
5 applicant in an application for the license or any violation of this title. The director of
6 the bureau of criminal investigation may disclose to the applicant the specific reason
7 for denial or revocation of the license, unless otherwise prohibited by law.
shall?

8 8. The applicant may appeal a denial or revocation of this license to the district court of
9 Burleigh County within ^{ninety} one hundred eighty days from the date of the denial or
10 revocation notification.

11 **SECTION 5. AMENDMENT.** Section 62.1-05-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **62.1-05-01. Possession and sale of machine guns, automatic rifles, silencers, and**
14 **bombs - Penalty - Forfeiture.**

15 No person ~~A person~~ may not purchase, sell, have, or possess a machine gun, fully
16 automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases, or
17 any other federally licensed firearm or dangerous weapon unless that person has complied with
18 the National Firearms Act [26 U.S.C. 5801-5872].

19 ~~Any federal licensee who purchases, sells, has, or possesses those items for the licensee's~~
20 ~~protection or for sale must forward a copy of the licensee's federal license along with the~~
21 ~~required weapons transfer form to the licensee's local county sheriff and to the chief of the~~
22 ~~bureau of criminal investigation within five days of the receipt of those forms.~~

23 A person who violates this section is guilty of a class C felony. Upon arrest of that person,
24 the firearm or dangerous weapon must be seized. Upon conviction of the person and motion to
25 the court in which the conviction occurred, the firearm or dangerous weapon must be forfeited
26 to the jurisdiction in which the arrest was made. The firearm or dangerous weapon may be sold
27 at public auction, retained for use, or destroyed pursuant to the court's order. If a qualified local
28 program as defined under section 12.1-32-02.2 has paid a reward for information that resulted
29 in forfeiture of the item and the item has been sold, the jurisdiction shall, after payment of
30 expenses for forfeiture and sale, repay the qualified local program for the reward that it has
31 paid.

HOUSE BILL 1219 TESTIMONY
SENATE ENERGY AND NATURAL RESOURCES

MARCH 19TH, 2015

FORT LINCOLN ROOM

Attachment
1

By Phil Pfennig, Chief Agent, ND Bureau of Criminal Investigation,
Office of Attorney General

Chairman Schaible and members of the Senate Energy and Natural Resources Committee:

My name is Phil Pfennig. I am a Chief Agent for the North Dakota Bureau of Criminal Investigation. I supervise the BCI's agents in western North Dakota including the organized crime agent; our agent and administrative staff assigned to the ND POST (Peace Officer Standards and Training) Board; BCI's training section and the ND Concealed Weapon Licensing unit.

I come before you today to lend testimony to House Bill 1219. This bill intends to amend a few sections in N.D.C.C. 62.1.

Section 1 seeks to amend parts of 62.1-02-01 with regard to persons who are prohibited from possessing firearms. The code reads that if the person is convicted of a specific offense, they would be denied from possessing a firearm for a period of 5 or 10 years depending on the conviction (violent felony is 10 years after all sentencing is complete; non-violent felonies and violent misdemeanors are 5 years after all sentencing is complete). The law currently states that these periods of prohibition apply to anyone, even if the conviction occurred outside the

state of North Dakota. The change would “reinstate” the right to possess firearms after the period of prohibition ONLY for people convicted in North Dakota. The problem with the statute as it currently exists is that the state of North Dakota does not have the authority to reinstate the right to possess firearms in jurisdictions outside of North Dakota. (This section of law is currently being used by an individual to argue that North Dakota has given his civil rights to own a firearm back even though he was convicted of a felony by the state of New York). The periods of prohibition would continue for convictions occurring in this state. I would note that if the person had their disability removed by a court where the conviction occurred, they would be able to possess firearms in North Dakota. This really is no different than a driver license: if someone’s privilege to drive has been revoked by another state, North Dakota may not grant that privilege to the person until they have completed any remedies required by the state in which they have been prohibited.

Section 2 addresses the section of 62.1-02-01.1 dealing with the same issues discussed in section 1 above. This section would fix the confusion of which jurisdiction can restore the right to possess firearms. The law as currently written, leads a person to believe that they may petition the district court where they currently live (in North Dakota) to have their rights reinstated from a conviction of another state or from the federal government. This simply cannot happen. A North Dakota court does not have jurisdiction to return a person’s civil rights taken away by a court of another state or of the federal government. The reverse is true also, meaning that another state cannot prevent North Dakota from returning someone’s rights. Again, the previous example of a driver license lends well here.

Section 3 seeks to clean up the language in 62.1-03-01 which pertains to open carry, making it clear as to whom the section does not apply. It was an oversight from the amendments last session.

Section 4 amends section 62.1-04-03 by allowing the director of BCI to disclose to the applicant the specific reason for a denial or revocation of their concealed weapon license. The reason for this to be permissive rather than mandatory is due to the laws pertaining to how criminal history record information can be released and the circumstances where the director is prohibited from releasing specifics.

Section 4 also amends section 62.1-04-03 to add a time limit an individual may appeal a revocation or denial of a concealed weapon license (180 days). Time limits for appeals are common throughout the Century Code. This would simply eliminate attempts to appeal a case that is several years old where documents may have been destroyed per law.

Section 5 seeks to remove a requirement that someone with an NFA firearm or the federally licensed dealer of such weapons (machine gun, short barreled rifle or shotgun, suppressors, explosives, etc) needs to send copies of this paperwork to the Sheriff and to the Chief of the Bureau of Criminal Investigation. Under current federal law, in order to obtain an NFA weapon, the applicant must complete an application and enclose fingerprints and a set of photographs and send this paperwork and attachments to the ATF where a background check is completed. Once this background check is complete, the sanctioned applicant receives approval in the form of a "tax stamp." This tax stamp is actually viewed as federal tax information and is confidential. The Bureau of Criminal Investigation has been receiving copies of these

forms for several years and does not desire to continue to receive nor store these forms. To the best of my knowledge and memory, these forms have not aided BCI in any investigations. Removal of paragraph 2 in 62.1-05-01 would remove the requirement that these forms be sent to BCI. However, we feel it is prudent to keep paragraph 1 (requiring that for someone to possess an NFA weapon, they follow federal law) and paragraph 3 (giving a penalty to those that would illegally possess an NFA firearm and the ability for law enforcement to dispose of the illegal firearm).

Mr. Chairman and members of the committee, this ends my testimony and I would stand for any questions that you may have.