

2019 HOUSE ENERGY AND NATURAL RESOURCES

HB 1309

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau Room, State Capitol

HB 1309
1/17/2019
30993

- Subcommittee
 Conference Committee

Committee Clerk: Kathleen Davis

Explanation or reason for introduction of bill/resolution:

a bill relating to the limitation on enforcing or providing assistance regarding violations of federal firearm laws

Minutes:

Attachment 1, 2

Chairman Porter: called the hearing to order on HB 1309.

Rep. Becker presented Attachment 1.

Chairman Porter:

Rep. Lefor: copy of a Texas bill. Clarify, has it passed?

Rep. Becker: It has not yet, waiting to go to the floor. Tennessee has a similar one. A person voiced a concern working with federal agencies and law enforcement regarding drugs. This in no way would inhibit local and state law enforcement from working with feds on drugs or anything just because there was also associated guns. You can assist in the enforcement on those portions without saying we're assisting in all portions. The federal government can ask us to help based on the drug.

Chairman Porter: The federal firearms law, did you do any research on what ramifications this would have on our current class 1 and class 2 concealed weapons permits because they require work with the federal government in alcohol tobacco firearms and with the FBI in order to get that permit, if this passes it appears our permitting system will just be for ND again and we'll lose all reciprocity.

Rep. Becker: It's in ND statute, good to go to assist federal agents.

Rep. Keiser: I understand with this bill ND law enforcement can participate on any federal effort whenever they choose to, we wouldn't be obligated to, correct?

Rep. Becker: Absolutely.

Raheem Williams, Policy Advisor for the ND Young Republicans: presented Attachment 2.

Vice Chairman Damschen: Rep. Becker said not enforcing federal law. I don't want it to be a sanctuary city. Tell me this isn't anywhere near that.

Williams: Sanctuary cities is not the goal. This is not anywhere near sanctuary cities. It's a 2nd amendment protection.

Vice Chairman Damschen: We're not talking about people that have committed a crime from the federal government. I get concerned when we're not allowing our law enforcement to enforce federal law. I realize there's a difference and I want there to be a big difference.

Williams: This bill has guidelines for cooperation and doesn't forbid cooperation. This says if there's an arbitrary executive order that says now the guns you have are illegal, it has to determine if this is within the jurisdiction of the century code, and if not, let him on his way.

Rep Heinert: So the ND Young Republicans Association has taken a stance on this?

Williams: Yes our executive board is in agreement with this.

Rep Heinert: In your written testimony, last sentence. You say this law accomplishes one thing, to allow the ND elected officials to decide what a good gun and bad gun is. Can you point that out in this bill that we can do that?

Williams: The law essentially defers to ND Century Code on guns in terms of what can and cannot be enforced. The ND Century Code is voted on and written the ND Legislature. All the guns illegal in ND according to the Century Code remain illegal and enforced by our law enforcement as it should be under our federal system of governance.

Chairman Porter: further questions? Support? Opposition? Closed the hearing.

2019 HOUSE SUBCOMMITTEE MINUTES

Energy and Natural Resources Subcommittee

32402 HB 1309
Committee Clerk Kathleen Davis

Meeting location: Coteau A Room, State Capitol
Date of meeting: 2/7/2019 3:40 PM
Members present: Chairman Roers Jones, Rep Bosch, Rep. Zubke, Rep. Eidson
Others present: Casey Miller, Chief Agent with BCI

Topics discussed:

HB 1309

- Our intent appears to be that our state law enforcement would not be involved in enforcing federal laws within the State of ND unless the items under 2 A,B,C occur
- Often times investigations happen in conjunction with local law enforcement, different state and federal issues will come up related to drugs and firearms and find out other things. If we pass this law, you wouldn't be able to investigate any of those federal violations as a state law enforcement, you'd have to call out federal
- premise is impractical from an administrative point, doesn't work in practice. Day to day in the field I don't think there's a practical way to can put it together
- What does the law say, should I be helping, shouldn't I, not a good premise? Right now we have a relationship where we help in all situations and should not be passing this.

Motion and vote:

Rep. Bosch made a motion to recommend a Do not pass.
Rep. Zubke, second.
Roll call vote 4 yes, 0 no, 0 absent. Motion carried.

Time of Adjournment 3:45

Explanation or reason for introduction of bill/resolution:

HB 1309 a bill relating to the limitation on enforcing or providing assistance regarding violations of federal firearm laws

2019 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau Room, State Capitol

HB 1309
2/14/2019
32721

- Subcommittee
 Conference Committee

Committee Clerk: Kathleen Davis

Explanation or reason for introduction of bill/resolution:

a bill relating to the limitation on enforcing or providing assistance regarding violations of federal firearm laws

Minutes:

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Chairman Porter: called the hearing to order on HB 1309.

Rep. Roers Jones: The part of this the committee had the most issue was Sub 2, that the State is not going to work with Federal law enforcement. Often times investigations happen in conjunction with local law enforcement when doing something related to drugs. Often times you find firearms, and find more as the investigation is ongoing. If this were the case local law enforcement wouldn't be able to investigate those federal violations. They'd have to call in the feds and have them take over that portion of the investigation or turn your head and pretend you didn't see the federal violations, contrary to the oath that officers take to protect the constitution. For these reasons we give a Do Not Pass recommendation.

Rep. Zubke: Second

Chairman Porter: We have motion and second for Do Not Pass. Discussion?
13 yes 1 no 0 absent Rep. Roers Jones is carrier.

Date: 2-7-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1309**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Rep Bosch Seconded By Rep Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones	✓	
Rep Bosch	✓		Rep. Ruby		
Rep. Devlin			Rep. Zubke	✓	
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Eidson	✓	

Total (Yes) 4 No 0

Absent 0

Floor Assignment _____

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

Date: 2-14-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1309**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Roers Jones Seconded By Rep Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall	✓	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep Bosch	✓		Rep. Ruby		✓
Rep. Devlin	✓		Rep. Zubke	✓	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	✓	
			Rep. Eidson	✓	

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep Roers Jones

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

REPORT OF STANDING COMMITTEE

HB 1309: Energy and Natural Resources Committee (Rep. Porter, Chairman)
recommends **DO NOT PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).
HB 1309 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1309

HB 1309

Addresses 62.1-01 of CC, General provisions of the Weapons title.

Subsection 1 defines firearm accessory.

Subsection 2 states state and local LEO may not assist federal government officials with the enforcement of a federal statute or rule that exceeds our own state law in section 62.1-01 (weapons) or 12.1-17 (terrorizing, etc).

An exception is given for the circumstance of a national security threat.

This line of thinking and legislating is not new.

It is consistent with the principle of the Anti-commandeering Doctrine.

This doctrine is about the states not being able to be forced to enforce a Federal regulatory program incompatible with our system of dual sovereignty.

4 Supreme Court cases set this doctrine

1842 Fugitive Slave Act

1992 Radioactive waste

2012 Medicaid expansion

1997 Printz v US - Brady Gun Bill. The ruling stated it is unconstitutional for Federal statute to force local LEO to do background checks.

The Printz case reinforces that it is a choice of each state whether to employ their state and local LEO to assist the Federal government with enforcement of Federal gun statutes.

Along the same lines as 2013 HB1309 (attached).

This was in the face of the Federal Assault Weapon Ban of 2013, which passed in one chamber, but not the other.

HB1309 passed the House, but failed in the Senate after the opposing testimony of the Attorney General. That testimony was effectively limited to "it's not needed" and "it's trying to solve a problem that doesn't exist."

Except if the 2013 Assault Ban had passed, we would have missed the ship.

?? And Obama executive orders vs Trump rescission on sellers and background checks??

Now we are coming to the present:

Sen. Feinstein's Assault Weapons Ban of 2019 - prohibits 205 guns as "assault weapons", adjustable stocks, magazines with >10 capacity, handguns of a certain weight, etc.

Pres. Trump signaled a significant willingness to look at several gun restrictions, and has even indicated a willingness to worry about due process *after* confiscation of guns.

Significant restrictions on guns and infringement of our 2nd Amendment right are a very real and nearly unavoidable reality. It doesn't matter whether it is 1, 5, or 10 years.

It makes no sense to wait until after the fact to take a reasonable, proactive course now.

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1309

Introduced by

Representatives Becker, Ertelt, Hoverson, Kasper, Louser, M. Ruby

Senators Kannianen, Luick, Myrdal, Osland, Unruh, Vedaa

1 A BILL for an Act to create and enact a new section to chapter 62.1-01 of the North Dakota
2 Century Code, relating to the limitation on enforcing or providing assistance regarding violations
3 of federal firearm laws.

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

5 **SECTION 1.** A new section to chapter 62.1-01 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Federal firearms laws - Limitations on enforcement.**

8 1. As used in this section, "firearm accessory" means an item used in conjunction with or
9 mounted on a firearm but is not essential to the basic function of a firearm. The term
10 includes a detachable firearm magazine.

11 2. An agency or political subdivision of the state and a law enforcement officer or
12 individual employed by an agency or political subdivision of the state may not contract
13 with or provide assistance to a federal agency or official with respect to the
14 enforcement of a violation of a federal statute, order, rule, or regulation purporting to
15 regulate a firearm, firearm accessory, or firearm ammunition unless:

16 a. The federal agency appeals to the state district court of the county in which the
17 violation or possible violation occurred or would occur and the court finds
18 probable cause that a national security threat exists;

19 b. The violation is also a violation under this title; or

20 c. The violation is also a violation of chapter 12.1-17.

Sixty-sixth
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

Representative Rick C. Becker

1 A BILL for an Act to create and enact a new section to chapter 62.1-01 of the North Dakota
2 Century Code, relating to the limitation on enforcing or providing information regarding
3 violations of federal weapons laws.

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

5 **SECTION 1.** A new section to chapter 62.1-01 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Federal weapons laws - Limitations on enforcement.**

8 A state or local law enforcement agency or officer may not enforce any weapons law other
9 than a weapons law explicitly provided for in this title. A state or local law enforcement agency
10 or officer may not provide information regarding a violation or possible violation of a federal
11 weapons law within the state to a federal agency or officer unless:

- 12 1. The federal agency appeals to the state district court of the county in which the
- 13 violation or possible violation occurred and the court finds probable cause that a
- 14 national security threat exists;
- 15 2. The violation of a federal weapons law is also a violation under this title; or
- 16 3. The violation of a federal weapons law is also a violation of chapter 12.1-17.

North Dakota Legislative Branch

Chapter 12.1-17

Assaults - Threats - Coercion - Harassment

Section	Section Name
12.1-17-01	Simple assault
12.1-17-01.1	Assault
12.1-17-02	Aggravated assault
12.1-17-03	Reckless endangerment
12.1-17-04	Terrorizing
12.1-17-05	Menacing
12.1-17-06	Criminal coercion
12.1-17-07	Harassment
12.1-17-07.1	Stalking
12.1-17-07.2	Distribution of intimate images without or against consent - Penalty
12.1-17-08	Consent as a defense
12.1-17-09	Killing or injury of law enforcement support animal - Definition - Penalty
12.1-17-10	Hazing - Penalty
12.1-17-11	Contact by bodily fluids or excrement
12.1-17-12	Assault or homicide while fleeing peace officer
12.1-17-13	Mandated treatment of domestic violence offenders

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North Dakota Legislative Branch

Title 62.1

Weapons

Chapter	Section Listing	Chapter Name
62.1-01	62.1-01 Sections	Definitions - General Provisions
62.1-02	62.1-02 Sections	Possession of Weapons
62.1-03	62.1-03 Sections	Handguns
62.1-04	62.1-04 Sections	Concealed Weapons
62.1-05	62.1-05 Sections	Machine Guns, Automatic Rifles, Silencers, Bombs

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CHAPTER 62.1-05
MACHINE GUNS, AUTOMATIC RIFLES, SILENCERS, BOMBS

HB 1309
1.17.19
Attachment 1

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

1. A person may not purchase, sell, have, or possess a machine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases, or any other federally licensed firearm or dangerous weapon unless that person has complied with the National Firearms Act [26 U.S.C. 5801-5872].
2. A person who violates this section is guilty of a class C felony. Upon arrest of that person, the firearm or dangerous weapon must be seized. Upon conviction of the person and motion to the court in which the conviction occurred, the firearm or dangerous weapon must be forfeited to the jurisdiction in which the arrest was made. The firearm or dangerous weapon may be sold at public auction, retained for use, or destroyed pursuant to the court's order. If a qualified local program as defined under section 12.1-32-02.2 has paid a reward for information that resulted in forfeiture of the item and the item has been sold, the jurisdiction shall, after payment of expenses for forfeiture and sale, repay the qualified local program for the reward that it has paid.

62.1-05-02. Persons exempt from chapter.

This chapter does not apply to:

1. The authorized agent and a servant of a person who has a license to purchase, sell, have, or possess a machine gun, submachine gun, fully automatic rifle, silencer, or a bomb loaded with explosives or poisonous or dangerous gases.
2. Any officer or member of a duly authorized military organization while on official duty and using the firearm or dangerous weapon issued to the officer or member by that organization.
3. A North Dakota law enforcement officer.
4. Any federal officer authorized by the federal government to have or possess a machine gun, submachine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases.

62.1-05-03. Chief law enforcement officer certification - Certain firearms.

1. For purposes of this section:
 - a. "Certification" means the participation and assent of the chief law enforcement officer necessary under federal law for the approval of the application to transfer or make a firearm. A chief law enforcement officer is not required to make any certification under this section the officer knows to be untrue, but the officer may not refuse to provide certification based on a generalized objection to private persons or entities making, possessing, or receiving firearms or any certain type of firearm the possession of which is not prohibited by law.
 - b. "Chief law enforcement officer" means any official, or the designee of the official, the bureau of alcohol, tobacco, firearms and explosives, or any successor agency, identified by regulation as eligible to provide any required certification for the making or transfer of a firearm.
 - c. "Firearm" has the same meaning as provided in the National Firearms Act [26 U.S.C. § 5845(a)].
2. When a chief law enforcement officer's certification is required by federal law or regulation for the transfer or making of a firearm, the chief law enforcement officer, within thirty days of receipt of a request for certification, shall provide the certification if the applicant is not prohibited by law from receiving or possessing the firearm or is not the subject of a proceeding that could result in the applicant being prohibited by law from receiving or possessing the firearm. If the chief law enforcement officer is unable to make a certification as required by this section, the officer shall provide the applicant with a written notification of the denial and the reason for this determination.

3. In making the certification required by subsection 2, a chief law enforcement officer or designee may require the applicant to provide only the information as is required by federal or state law to identify the applicant and conduct a criminal background check, including a check of the national instant criminal background check system, or to determine the disposition of an arrest or proceeding relevant to the applicant's eligibility to lawfully possess or receive a firearm. A chief law enforcement officer may not require access to or consent for an inspection of any private premises as a condition of making a certification under this section.
4. Chief law enforcement officers and their employees who act in good faith are immune from liability arising from any act or omission in making a certification as required by this section.
5. An applicant whose request for certification is denied may appeal the chief law enforcement officer's decision to the district court for the county in which the applicant resides in accordance with the procedures provided in section 28-34-01. If the court finds that the applicant is not prohibited by law from receiving or possessing the firearm, or is not the subject of a proceeding that could result in the prohibition, or that there is insufficient evidence to support the chief law enforcement officer's determination that the officer cannot truthfully make the certification, the court shall order the chief law enforcement officer to issue the certification and award court costs and reasonable attorney's fees to the applicant.

62.1-02-05. Possession of a firearm or dangerous weapon at a public gathering -
Penalty - Application.

HB 309
1.17.19

Attachment 1

1. An individual who knowingly possesses a firearm or dangerous weapon at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" means an athletic or sporting event, a school, a church, and a publicly owned or operated building.
2. This section does not apply to:
 - a. A law enforcement officer, or a correctional officer employed by the department of corrections and rehabilitation or by a correctional facility governed by chapter 12-44.1. A correctional officer employed by the department of corrections and rehabilitation may carry a firearm only as authorized in section 12-47-34. A correctional officer employed by a correctional facility governed by chapter 12-44.1 may carry a firearm or dangerous weapon only as authorized in section 12-44.1-30;
 - b. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;
 - c. A competitor participating in an organized sport shooting event;
 - d. A gun or antique show;
 - e. A participant using a blank cartridge firearm at a sporting or theatrical event;
 - f. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;
 - g. A student and an instructor at a hunter safety class;
 - h. Private and public security personnel while on duty;
 - i. A state or federal park;
 - j. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question;
 - k. An individual in a publicly owned or operated rest area or restroom;
 - l. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship;
 - m. A state, federal, or municipal court judge, a district court magistrate judge or judicial referee, and a staff member of the office of attorney general if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient; and
 - n. An individual's storage of a firearm or dangerous weapon in a building that is owned or managed by the state or a political subdivision, provided:
 - (1) The individual resides in the building;
 - (2) The storage is inside the individual's assigned residential unit; and
 - (3) The storage has been consented to by the state, the governing board, or a designee.
3. This section does not prevent any political subdivision from enacting an ordinance that is less restrictive than this section relating to the possession of firearms or dangerous weapons at a public gathering. An enacted ordinance supersedes this section within the jurisdiction of the political subdivision.
4. Notwithstanding any other provision of law, a church or place of worship may not be held liable for any injury or death or damage to property caused by an individual permitted to carry a dangerous weapon concealed under this section.

86R1231 LHC-D

TEXAS

By: Krause H.B. No. 238

A BILL TO BE ENTITLED
AN ACT

relating to the enforcement of certain federal laws regulating firearms, firearm accessories, and firearm ammunition within the State of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1, Penal Code, is amended by adding Section 1.10 to read as follows:

Sec. 1.10. ENFORCEMENT OF CERTAIN FEDERAL LAWS REGULATING FIREARMS, FIREARM ACCESSORIES, AND FIREARM AMMUNITION. (a) In this section:

(1) "Firearm" has the meaning assigned by Section 46.01.

(2) "Firearm accessory" means an item that is used in conjunction with or mounted on a firearm but is not essential to the basic function of a firearm. The term includes a detachable firearm magazine.

(b) An agency of this state or a political subdivision of this state, and a law enforcement officer or other person employed by an agency of this state or a political subdivision of this state, may not contract with or in any other manner provide assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation purporting to regulate a firearm, a firearm accessory, or firearm ammunition if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation, such as a capacity or size limitation or a registration requirement, that does not exist under the laws of this state.

(c) Subsection (b) does not apply to a contract or agreement to provide assistance in the enforcement of a federal statute, order, rule, or regulation in effect on August 31, 2019, that pertains to border security.

(d) A political subdivision of this state may not receive state grant funds if the political subdivision adopts a rule, order, ordinance, or policy under which the political subdivision requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b) or, by consistent actions, requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b).

State grant funds for the political subdivision shall be denied for the fiscal year following the year in which a final judicial determination in an action brought under this section is made that the political subdivision has intentionally required the enforcement of any federal statute, order, rule, or regulation described by Subsection (b).

(e) Any citizen residing in the jurisdiction of a political subdivision of this state may file a complaint with the attorney general if the citizen offers evidence to support an allegation that the political subdivision has adopted a rule, order, ordinance, or policy under which the political

subdivision requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b) or that the political subdivision, by consistent actions, requires the enforcement of any federal statute, order, rule, or regulation described by Subsection (b). The citizen must include with the complaint the evidence the citizen has that supports the complaint.

(f) If the attorney general determines that a complaint filed under Subsection (e) against a political subdivision of this state is valid, the attorney general may file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county in which the principal office of the political subdivision is located to compel the political subdivision to comply with Subsection (b). The attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(g) An appeal of a suit brought under Subsection (f) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The appellate court shall render its final order or judgment with the least possible delay.

(h) The attorney general shall defend any agency of this state that the federal government attempts to sue for an action or omission consistent with the requirements of this section.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

Sixty-third
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1183

Introduced by

Representatives Streytle, Becker, Brabandt, Grande, Headland, Maragos, Porter, Ruby,
Toman

Senators Larsen, Miller, Sitte

1 A BILL for an Act to create and enact three new sections to chapter 62.1-01 of the North Dakota
2 Century Code, relating to forbidding state governmental entities from providing aid and
3 assistance to the federal government or any other governmental entity for the investigation,
4 enforcement, and prosecution of federal firearms laws not in force as of January 1, 2013; and to
5 provide for retroactive application.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 SECTION 1. A new section to chapter 62.1-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **Definitions.**

10 As used in this Act, unless the context otherwise requires:

- 11 1. "Deputation or other official status" means the acceptance or other conveyance of
12 permanent or temporary authority from any governmental entity, including federal or
13 state governmental entities, including a political subdivision, for the purposes of
14 conducting activities to enforce federal firearms laws not in force as of January 1, 2013.
- 15 2. "Federal firearms laws not in force as of January 1, 2013" means those laws passed
16 by the Congress of the United States and signed into law by the President of the
17 United States after December 31, 2012, a rule, a regulation, or an executive order that
18 specifically deprives a citizen of the United States of manufacturing, importing, buying,
19 selling, transferring, transporting, possessing, bearing, and keeping on the citizen's
20 body or in a location where the citizen has a legal right to be unless otherwise
21 forbidden by this state's law, and any other law, including a rule, a regulation, or an
22 executive order, forbidding the private ownership of any firearm not forbidden as of
23 December 31, 2012. The term includes a law, rule, regulation, or an executive order

11

1 that is retroactively dated after December 31, 2012, to be in effect before January 1,
2 2013.

3 3. "Firearm" includes any accessories for a firearm, including:
4 a. Any type of ammunition and equipment and supplies used to reload ammunition;
5 b. Any device used to hold ammunition for feeding of the ammunition into a firearm,
6 regardless of capacity; and
7 c. Other accessories permanently or temporarily attached or affixed to a firearm, or
8 modifications made to such firearm; unless such attachment, affixment, or
9 modification is in violation of a law in effect on December 31, 2012.

10 4. "Information" means knowledge gained in the course of activities performed by a
11 governmental entity of this state, including a political subdivision, or knowledge
12 provided to these governmental entities by any other party, which may indicate a
13 citizen is or could be in violation of federal firearms laws not in force as of January 1,
14 2013, and be used in the prosecution of an individual.

15 5. "Resource support" means individuals, funding regardless of source, equipment,
16 supplies, real property, intellectual property, assistance, or other assets of or
17 associated with any governmental entity, including federal or state governmental
18 entities, including a political subdivision, for the purposes of conducting activities to
19 enforce federal firearms not in force as of January 1, 2013.

20 6. "Resources" includes individuals, funding regardless of source, equipment, supplies,
21 real property, intellectual property, assistance, or other assets of or associated with a
22 governmental entity of this state, including a political subdivision.

23 **SECTION 2.** A new section to chapter 62.1-01 of the North Dakota Century Code is created
24 and enacted as follows:

25 **State enforcement of certain federal firearm laws prohibited.**

26 1. A state or local governmental entity, including law enforcement and those individuals
27 responsible for or who otherwise support prosecution of laws within this state, may not
28 knowingly and for the sole purpose do any of the following:
29 a. Investigate, enforce, or prosecute a violation or suspected violation of federal
30 firearms laws not in force as of January 1, 2013;

- 1 b. Assist with the investigation, enforcement, or prosecution of a violation or
2 suspected violation of federal firearms laws not in force as of January 1, 2013;
3 c. Provide any resources, information, or assistance for a violation or suspected
4 violation of federal firearms laws not in force as of January 1, 2013;
5 d. Accept resource support for, and use existing resource support already received
6 for a violation or suspected violation of federal firearms laws not in force as of
7 January 1, 2013; or
8 e. Take any other action which can or may directly or indirectly aid or assist any
9 governmental entity in investigating, enforcing, or prosecuting any citizen of the
10 United States for a violation or suspected violation of federal firearms laws not in
11 force as of January 1, 2013.
- 12 2. A state or local governmental entity, including law enforcement and those individuals
13 responsible for or who otherwise support prosecution of laws within this state, may not
14 jail, confine, or imprison any citizen by its own actions or in support of another
15 governmental entity solely for a violation or suspected violation or conviction of federal
16 firearms laws not in force as of January 1, 2013.
- 17 3. A state or local governmental entity, including law enforcement and those individuals
18 responsible for or who otherwise support prosecution of laws within this state, may not
19 confiscate a firearm from a citizen due to the sole reason that the citizen is deemed in
20 violation or suspected violation of federal firearms laws not in force as of January 1,
21 2013, unless the firearm is used in the commission of a crime other than the violation
22 or suspected violation of federal firearms laws in force after December 31, 2012, and
23 the firearm is required as evidence of that crime.
- 24 4. A state or local governmental entity, including law enforcement and those individuals
25 responsible for or who otherwise support prosecution of laws within this state, may not
26 accept permanent or temporary deputation or other official status from any other
27 governmental entity for the purposes of conducting activities prohibited by this Act.
28 State resources and the resources of a political subdivision may not be turned over to
29 the temporary or permanent control, ownership, leasing, or other use by any
30 governmental entity for the purposes of conducting activities otherwise forbidden of a
31 governmental entity of the state, including a political subdivision.

- 1 5. A state or local governmental entity may not adopt rules, regulations, resolutions,
2 ordinances, or provisions of a home rule charter identical or similar to federal firearms
3 laws not in force as of January 1, 2013, for the purposes of enforcing laws identical or
4 similar to these federal firearms laws under its own authority.
- 5 6. A state or local governmental entity of the state, including law enforcement and those
6 individuals responsible for or who otherwise support prosecution of laws within the
7 state and a political subdivision, may continue to support and act in cooperation with
8 other governmental entities for other enforcement and prosecution actions not related
9 to federal firearms laws not in force as of January 1, 2013.

10 **SECTION 3.** A new section to chapter 62.1-01 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Remedy.**

13 In addition to any other remedy allowed by law, an aggrieved party under this Act may
14 obtain in a civil action all appropriate relief to prevent or remedy a violation of this Act. An
15 aggrieved party may not bring a civil action against a law enforcement officer as an individual,
16 but relief must be sought from the governmental entity that employs the individual.

17 **SECTION 4. RETROACTIVE APPLICATION.** This Act applies retroactively to federal
18 firearms laws in force as of January 1, 2013.

#2
HB 1309
1-17-19

North Dakotans Govern North Dakota: Protect Our Rights.
by Raheem Williams - Policy Advisor for the North Dakota Young Republicans.

Rep. Rick Becker is introducing HB 1309 which would govern the ability of local law enforcement to subject North Dakotans to arbitrary changes in federal gun laws. I assisted Rep. Rick Becker in conducting the background research for this bill. I would like to engage the public in informed, thoughtful dialogue before anti-gun fearmongers smear this bill. Let's review the facts.

First and foremost, this bill in current draft form is 100% constitutional. This is due to the anti-commandeering doctrine of the 10th amendment. This is a widely established legal interpretation of the 10th amendment which limits the ability of the federal government to coerce state and local officials into enforcing federal law. Although applying it to federal gun laws may irk some on the political left, this is the same legal doctrine that allows sanctuary cities for illegal immigrants to exist and defy cooperation with federal immigration authorities.

The history of anti-commandeering doctrine is rich in protecting both state's rights and human rights. For example, in *Prigg v. Pennsylvania* (1842), the United States Supreme Court held that the federal government could not force states to implement or carry out the Fugitive Slave Act of 1793. Similarly, in *Printz v. the United States* (1997) The United States Supreme Court ruled in favor of local sheriffs that refused to enforce the background checks required in the federal Brady Gun Bill. The aforementioned cases are just a few in a long history of well established legal precedent in both The United States Supreme Court and lower federal courts as well. The anti-commandeering doctrine is a fundamental aspect of American Federalism.

Furthermore, any attempt to punish North Dakotans for refusing to enforce federal gun laws will almost certainly fail. In *Independent Business v. Sebelius* (2012), the United States Supreme Court held that the federal government could not compel states to expand Medicaid by threatening to withhold funding for Medicaid programs already in place. This precedent severely limits the ability of the federal government to force North Dakota to enforce any federal laws by withholding federal funding, ensuring priorities such as federal highway and agriculture programs aren't weaponized against the state. This is also why attempts to defund sanctuary cities for illegal immigrants have failed to withstand legal scrutiny.

The current bill Rep. Becker is proposing is unlike past iterations of similar bills. This bill doesn't create conflicts between state and federal officials which would violate the constitutional supremacy of federal law. Federal officials will still be free to enforce federal gun laws within North Dakota; the bill limits the extent to which local and state officials can assist in enforcing gun laws North Dakota don't approve of. This bill doesn't ban local officials from cooperating with federal officials. The bill, if passed creates clear guidelines for such cooperation in regards to firearms. For example, if someone commits a felony while in possession of a federally illegal firearm, the bill allows for federal officials to be informed of the violation of federal law. If there is a national security issue involving firearms the bill will enable federal officials to appeal to a North Dakota district court judge to compel local police cooperation with federal agents. This bill also allows for federal authorities to be tipped when a violation of North Dakota's gun laws also constitute a violation of federal gun statutes.

In short, machine guns and rocket-propelled grenade launchers which are illegal (or highly regulated) under North Dakota Century Code will remain so and cooperating with federal officials in regards to those weapons will remain legal. This law accomplishes one thing and only one thing. It allows the North Dakota's elected

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officials to decide what a bad gun and a good gun is, not coastal politicians that have never handled a firearm or set foot in the Great State of North Dakota.